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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1288

ENGLAND, ET AL.,

Appellants,

versus

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, ET AL.,

Appellees.

Appeal from the Three-Judge United States District Court, Eastern District of Louisiana.

STATEMENT AS TO JURISDICTION.

J. MINOS SIMON,
Post Office Box 52116 OCS,
Lafayette, Louisiana,

FLOYD J. REED,
919 Maison Blanche Building,
New Orleans, Louisiana,
Attorneys for Plaintiffs-Appellants.

Of Counsel:
SIMON, TRICE & MOUTON,
REED, REED AND REED.

HAUSER-AMERICAN, "LEGAL PRINTERS", 441 GRAVIER STREET, NEW ORLEANS, LA.

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STATEMENT AS TO JURISDICTION

The appellants, pursuant to United States Supreme Court Rules 13(2) and 15, file this statement of the basis upon which the Supreme Court of the United States has jurisdiction on direct appeal to review the judgment of the three-judge United States District Court, Eastern District of Louisiana, in dismissing appellants' complaint, and should exercise such jurisdiction in this case.

OPINION BELOW

The reasons and judgment of said District Court were entered on November 9, 1965. A copy of the opinion is attached hereto as Appendix A, *infra*, pp. A1-10. The case

is reported: *Jerry R. England, et al, plaintiffs, v. Louisiana State Board of Medical Examiners, et al, defendants,* 246 F. Supp. 993. No separate findings of fact and conclusions of law were made. Earlier opinions in the same case and opinions in companion cases, reference to which may be necessary, though they do not appear indispensable, have been rendered, due to the application of the abstention doctrine and are reported as follows: *England v. Louisiana State Board of Medical Examiners,* 5 Cir., 259 F. 2d 626 (1958), rehearing denied, 263 F. 2d 661, certiorari denied, 359 U.S. 1012, 79 S. Ct. 1149, 3 L. Ed. 2d 1036 (1959); *England v. Louisiana State Board of Medical Examiners,* E.D. La., 180 F. Supp. 121 (1960). *England v. Louisiana State Board of Medical Examiners,* La. App., 126 S. 2d 51 (1960); *England v. Louisiana State Board of Medical Examiners,* E.D. La., 194 F. Supp. 521 (1961) and *England v. Louisiana State Board of Medical Examiners,* 375 U.S. 411, 84 S. Ct. 461, 11 L. Ed. 2d 440 (1964).

JURISDICTION

The appeal herein is from a final judgment entered by the said District Court, dismissing the appellants' complaint which prayed injunction against enforcement of Louisiana Revised Statutes, Title 37, Section 1261-90 (herein called Medical Practice Act) and administrative regulations and acts issued thereunder by the Louisiana State Board of Medical Examiners. The complaint alleges that the statutes and regulations deny appellants of their property right, privileges and immunities as citizens of the United States, due process and equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution. The complaint further alleges violation of the Federal Civil Rights Act, Revised Statute, Sections 1977 and 1979, (1875), 42 U.S.C. 1981 and 1983

and asks for declaratory relief (28 U.S.C. 2201, 2202).

The action was dismissed by final order dated November 9, 1965. Notice of appeal was filed in said district court on January 7, 1966.

This court has jurisdiction on direct appeal to review said judgment below under 28 U.S.C. 1253 and 2101 (b), and the following decisions sustain that jurisdiction: *Yick Wo v. Hopkins*, 118 U.S. 355, 6 S. Ct. 1064; *Schware v. Board of Bar Examiners*, 353 U.S. 232, 77 S. Ct. 752, 1 L. Ed. 796; *Hernandez v. State of Texas*, 347 U.S. 475, 74 S. Ct. 667, 98 L. Ed. 866; *Morey v. Doub*, 354 U.S. 457, 77 S. Ct. 1344; *Aptheker v. Secretary of State*, 378 U.S. 500, 84 S. Ct. 1659; *NAACP v. Alabama*, 377 U.S. 288, 84 S. Ct. 1302; *NAACP v. Button*, 371 U.S. 415, 83 S. Ct. 328, 9 L. Ed. 2d 405; *Louisiana, ex rel, Gremillion v. NAACP*, 366 U.S. 293, 81 S. Ct. 1333, 6 L. Ed. 2d 301; *Shelton v. Tucker*, 364 U.S. 479, 81 S. Ct. 247, 5 L. Ed. 2d 231; *Lucas v. Forty-fourth General Assembly of the State of Colorado*, 377 U.S. 713, 84 S. Ct. 1459; *Connally v. General Construction Co.*, 269 U.S. 385; *Lanzetta v. New Jersey*, 269 U.S. 385; *Stromberg v. California*, 283 U.S. 359; *Lovell v. City of Griffin*, 303 U.S. 444, 58 S. Ct. 666, 82 L. Ed. 949; *Dent v. West Virginia*, 129 U.S. 114, 122, 9 S. Ct. 231, 233, 32 L. Ed. 628; *Jacobson v. Mass.*, 197 U.S. 11, 31, 25 S. Ct. 358, 363, 49 L. Ed. 643; *Watson v. Maryland*, 218 U.S. 173, 178, 30 S. Ct. 644, 646, 54 L. Ed. 987; *Graves v. Minnesota*, 372 U.S. 425, 428, 47 S. Ct. 122, 123, 71 L. Ed. 331; *Williamson v. Lee Optical Company*, 348 U.S. 483, 491, 75 S. Ct. 461, 466, 99 L. Ed. 563.

STATUTE INVOLVED

The State statute involved is Louisiana Revised Statutes, Title 37, Section 1261-90 (LSA-R.S. 37:1261-90). A reproduction of the statute is attached hereto as Appendix B, *infra*, pp. B1-11.

QUESTIONS PRESENTED

1. Is a state statute, which sweepingly defines the practice of medicine to include every conceivable concept of medical therapy, but which in matters of licensure restricts the test of qualifications to subjects that are exclusively peculiar to only one singular concept of therapy, i.e., allopathy, constitutional?

2. Is such a state statute constitutional in the face of a legislative pattern of discrimination where, by the enactment of special legislation, every concept of therapy differing from allopathy is exempt from the statute, except the concept of chiropractic, where there exists no distinctive circumstances, bearing reasonable relation to the discrimination, between chiropractic and those concepts and practices exempted?

3. Is a state statute, ostensibly purported to regulate all forms of medical practice, rendered unconstitutional by administrative action which requires an applicant for licensure to possess a diploma from a college in good standing teaching only the allopathic concept of medicine, where the statute itself requires only that such applicant shall possess a diploma from a "college in good standing of any sect teaching medicine or the healing art"?

4. Are chiropractic physicians denied due process and equal protection where, by virtue of state law and state action, they are required before they can practice their profession to stand examination before a state agency composed exclusively of doctors of allopathy, who admittedly hate and despise doctors of chiropractic and who furthermore officially have a direct financial and professional interest in the suppression of chiropractic physicians?

5. Is Louisiana Revised Statute, Title 37, Section 1261, et seq., void for vagueness; alternatively, are appel-

lants denied constitutional due process and equal protection because said statute constitutes a legislative pursuit by means that broadly stifle personal liberties when the end can be more narrowly achieved?

REASONS WHY THE QUESTIONS PRESENTED ARE SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION

This case involves not only the constitutionality of the Louisiana Medical Practice Act and the State action taken in reliance thereon, but upon the final decision of this Court will depend also the action of the remaining states of the Union in respect to the chiropractic profession of the nation. If the decision appealed from remains unreversed, then every state legislature of the nation will have the constitutional power to enthrone the allopathic concept of medicine as generic medicine to the exclusion of all others whose therapeutic efficacy is unchallengeable. The horrendous consequence will be that scientific progress in the healing art will be stagnated by the enervating effects of medical monopoly. Furthermore, every citizen the nation over will be denied the right to exercise a reasonable choice in the method of treatment of his ills, contrary to his constitutional right to do so. *England v. Louisiana State Board of Medical Examiners*, 259 F. 2d 626, 627.

STATEMENT OF THE CASE

(a) *As to Question Number 1:*

Plaintiffs, appellants herein, are chiropractic physicians. The defendant, Board of Medical Examiners, is invested by state law with power to enforce the provisions of the Medical Practice Act. The Board by law is composed exclusively of allopathic physicians. As enforced and applied, the provisions of the Medical Practice Act, though

actually relating exclusively to the allopathic concept of medicine, are used as a state instrument to suppress the chiropractic profession. Under the guise of regulation, the chiropractic physician is singled out discriminatorily for extermination.[1]

On its face, the state law involved appears disarmingly fair and even reasonable. When viewed in the light of the fully developed evidentiary record, however, it stands out as but a legislative gambit for the establishment of a monolithic system of medical therapy, nurtured and sustained by a politically powerful collection of allopathic physicians whose system of therapy is perpetuated by the law involved.

Before examining this statute and in order concisely to place this question in context,[2] certain parenthetical

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[1] With one exception, State ex-rel McAvoy v. Louisiana State Board of Medical Examiners, 1959, 238 La. 502, 115 So. 2d 833, all reported legal actions taken against physicians by the Louisiana Board of Medical Examiners have been directed against chiropractic physicians:

Louisiana State Board of Medical Examiners v. Crank, 102 So. 415; *LSBME v. Fife*, 111 So. 58; *LSBME v. Vincent*, 73 So. 250; *LSBME v. Beatty et al.*, 55 So. 2d 761; *LSBME v. Booth*, 76 So. 2d 15; *LSBME v. Mooring*, 86 So. 2d 641; *LSBME v. Tackett*, 70 So. 2d 207, 71 So. 2d 137; *LSBME v. Weller*, 77 So. 2d 166; *LSBME v. Beaird*, 83 So. 2d 481; *LSBME v. Sloat*, 91 So. 2d 412; *LSBME v. Lensgraf*, 101 So. 2d 734; *LSBME v. Mehenery*, 69 So. 2d 592; *LSBME v. Martindale*, 83 So. 2d 544; *LSBME v. Adams*, 84 So. 2d 282; *LSBME v. Wimberly*, 85 So. 2d 679; *LSBME v. Craft*, 93 So. 2d 298; *LSBME v. Anton*, 105 So. 2d 303; *LSBME v. Karas*, 85 So. 2d 354; *LSBME v. Brodnax*, 85 So. 2d 356; *LSBME v. Banker*, 100 So. 2d 920; *LSBME v. Barber*, 78 So. 2d 60; *LSBME v. Boisvert*, 103 So. 2d 507; *LSBME v. Fisher*, 76 So. 2d 56; *LSBME v. Gilchrist*, 92 So. 2d 760; *LSBME v. Parker*, 84 So. 2d 841; *LSBME v. Savells*, 92 So. 2d 797; *LSBME v. Stephenson*, 93 So. 2d 330, 108 So. 2d 826; *LSBME v. Winder*, 97 So. 2d 850; *LSBME v. Metzel*, 109 So. 2d 249; *LSBME v. Arton*, 109 So. 2d 249; *LSBME v. Boyd*, 108 So. 2d 827; *LSBME v. Eastman*, 108 So. 2d 827; *LSBME v. England*, 108 So. 2d 827; *LSBME v. Racca*, 108 So. 2d 827; *LSBME v. Arton* (1961) 130 So. 2d 666; *LSBME v. Anton* (1958) 105 So. 2d 303; *LSBME v. Lensgraf* (1958) 101 So. 2d 734; *LSBME v. Wimberly*, (1956) 85 So. 2d 679.

[2] The district court wholly misconstrued the thrust of appellants' complaint and consequently misapprehended the legal question involved in this litigation. The lower court considered that the case presented it with the following question:

"May Louisiana require a chiropractor to obtain what is in effect a *medical education* from an approved medical school

Continued

factual considerations must be noted. Of overriding significance on this point is the undisputed testimony of the secretary of the defendant, Louisiana State Board of Medical Examiners, which establishes the following facts:[3]

(a) Generic medicine or the healing art is divided into four major (sects) disciplines or concepts of therapy: homeopathy, allopathy, chiropractic, and osteopathy. Each is **fundamentally** different from the other.

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[2] (Continued)

before he may practice his profession in the state?" (246 F. Supp. at p. 996)

This is an erroneous statement of the real question presented. The consequence is that the lower court has not adjudicated the real question at issue.

The error of the lower court lies in its failure to draw fundamental distinctions in respect to the healing art. While the word "medicine" denotes a generic concept of healing, embracing a variety of acceptable therapies, the lower court inadvertently equated generic medicine with allopathy, a therapeutic sect of medicine only. In doing this, the court enthroned allopathy as embodying the infallable standards of the healing art by which the right to legal existence on the part of all other sects, and particularly chiropractic, is to be tested. The inadvertent, fictional institution of this erroneous postulate has resulted in a pervasively erroneous conclusion of law.

Contrary to the assertion of the lower court, appellants do not object to being required to have a "medical" education. In fact, they have a "medical" education: As with the allopathic physicians, they are graduates in the basic sciences. They acquired this "medical" education at a chiropractic college. The allopathic physician acquired his "medical" education at an allopathic college. The point of departure between the allopathic and chiropractic physicians in their "medical" educational pursuits relates to the question of *therapy* only. Allopathic therapy engages the practitioner in the use of drugs (materia medica, theory and practice) and surgery. Only this therapeutic theory is taught at an allopathic college. The chiropractic therapy engages the practitioner in the adjustment or alignment of disrelated vertebral bodies and their articulating surfaces, (vertebral manipulations, chiropractic theory and practice) without the use of drugs and surgery. Only this therapeutic theory is taught at a chiropractic college.

Appellants object, not to being required to have a "medical" education, but to being required to be a graduate allopathic physician before he can engage in practice as a chiropractic physician. The basic question before the lower court, therefore, should have been phrased as follows:

> "May Louisiana require a chiropractic physician to obtain what is in effect an "allopathic" education from a school approved by the American Medical Association before he may practice his profession in the state?"

This question is fundamentally different from that one postulated by the lower court and necessarily results in presenting to the court a fundamentally different proposition of law for adjudication.

[3] See Appendix C, pp. C1-9, for transcript of pertinent testimony.

(b) Homeopathy is that phase of the healing art or generic medicine which treats human ailments by introducing into the body system infinitesimal doses of drugs which are capable of producing symptoms like those of the disease treated.

(c) Allopathy is that phase of the healing art or generic medicine which treats human ailments by introducing into the body system doses of drugs which are capable of creating antigens, and by the use of surgery.

(d) Chiropractic is that phase of the healing art or generic medicine which treats human ailments by manipulating the body segments of the spine and their articulating components with a view to establishing their structural integrity as a means of eliminating all interference with normal nerve transmission, without the use of drugs or surgery.

(e) Osteopathy is that phase of the healing art or generic medicine which treats human ailments by manipulations applied to the nerve centers, bones, muscles and ligaments without the use of drugs or medicine, except antiseptics and anodynes locally applied.

(f) In theory and practice, homeopathy is not allopathy and vice versa.

(g) In theory and practice, chiropractic is not allopathy and vice versa.

(h) In theory and practice, osteopathy is not allopathy and vice versa.

Thus, the undisputed evidentiary record in this case establishes that in matters of therapy, the four major medical sects are not rationally related, though they all seek the same objective, i.e., the cure of human ailments.

These undisputed facts, which fundamentally distinguish these sects of medicine, are of crucial significance to a determination of the legal question under consideration. They are of such significance, because the state law involved as administered singles out only one therapy as the standard of qualification for all medical practitioners, while broadly defining the practice of medicine to include all sects of medicine.

Louisiana Revised Statute, Title 37, Section 1261 contains the following sweeping definition:

> "As used in this Part, 'the practice of medicine, surgery, or midwifery' means the holding out of one's self to the public as being engaged in the business of diagnosing, treating, curing, or relieving any bodily or mental disease, condition, infirmity, deformity, defect, ailment, or injury in any human being other than himself whether by the use of any drug, instrument or force, whether physical or psychic, or of what other nature, or any other agency or means; or the examining, either gratuitously or for compensation, of any person or material from any person for such purpose whether such drug, instrument, force, or other agency or means is applied or used by the patient or by another person; or the attending of a woman in childbirth without the aid of a licensed physician, surgeon or midwife; or the using of any other title other than optician, to indicate that he is engaged in the business of refracting or fitting glasses to the human eye."

According to the provisions of Section 1271, applicants falling within the broad definition (all four major disciplines or sects necessarily are included) must stand a satisfactory examination in the following subjects:

> "Anatomy, Physiology, Chemistry, Physical Diagnosis, Pathology and Bacteriology, Hygiene,

Surgery, Theory & Practice of Medicine, Materia Medica, Obstetrics, and Gynecology."

Plaintiffs, while not objecting to a fair examination in Anatomy, Physiology, Chemistry, Physical Diagnosis, Pathology and Bacteriology, Hygiene, strenuously object to standing an examination in the Theory and Practice of Medicine, Materia Medica and Surgery as contained in Section 1271. The reason for their objection is that these latter subjects are totally foreign to the practice of chiropractic in that they relate **exclusively** to therapy, and as administered, **only** to the concept of therapy peculiar to the allopathic physician.

Here again there is no disputed fact. It has been admitted under oath by the Secretary of the Louisiana State Board of Medical Examiners that as a matter of official administration, the terms "Theory and Practice of Medicine, Materia Medica and Surgery" as contained in Section 1271 mean and relate exclusively to the allopathic theory and practice of medicine, to the elimination of all others.[4] Such an admission projects for consideration the rationality of requiring all medical practitioners to conform to the limited standards of the therapy of only one, the allopathic. A lengthy discourse is not necessary to demonstrate the total irrationality of such a requirement.

If, indeed, these subjects relate as they admittedly do only to allopathic theory and practice, they certainly are not appropriate to the calling of a chiropractic physician. Chiropractic physicians do not use drugs in the treatment of human ailments. They do not perform surgery. Examining a chiropractic physician in such subjects, therefore, could enlighten no one as to his competence in his

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[4] See Testimony of Doctor Lyons appearing in Appendix C, pp. C1-9.

chosen field, nor would it enhance or insure his qualification as a chiropractic physician.

It is, however, an appropriate test of the qualification of an allopathic physician. This requirement relates exclusively to his chosen field, to his specific calling. This is the particular therapy the allopathic physician will pursue during his entire professional life. He will subject his patients to this particular brand of therapy. It is, therefore, indispensable that he be fully qualified in this therapeutic theory and practice. He has been schooled and trained in it. Such a requirement, therefore, is rationally related and appropriate to his calling.

Not so the chiropractic physician or the osteopathic physician or the homeopathic physician. This is not their form of therapy. A chiropractic physician will subject his patients not to allopathic therapy, but to chiropractic therapy only. As the allopathic physician has not been educated or trained in chiropractic therapy, neither has the chiropractic physician been trained in allopathic therapy. Both, however, are competent to diagnose physical ailments. Both have been educated and trained in the basic sciences, and a testing of their knowledge in Anatomy, Physiology, Chemistry, Physical Diagnosis, Pathology and Bacteriology, Hygiene, Obstetrics and Gynecology, enumerated in Section 1271, will adequately determine their qualification as physicians. But beyond that, a testing of the knowledge of one in the peculiar therapy or mode of treatment employed by the other, will accomplish nothing fair or rational or legislatively reasonable. The therapy of the one admittedly is fundamentally different from that of the other.

Neither, therefore, is appropriate to the calling of the other. One, therefore, is not rationally related to the other.

The requirement that one must stand an examination in the therapy of the other unarguably is neither reasonably nor rationally related to the regulation of either.

The conclusion that this requirement is not reasonably related to the regulation of chiropractic is made doubly certain by the evidentiary record of this case. The undisputed evidence in this establishes the existence of an engaging paradox. This evidence shows the official policy under the state law in question is such that the Medical Board would permit a licensee, though not tested in the least in chiropractic theory and practice, to practice chiropractic or any other theory and practice of therapy he might choose.[5] In short, no matter how ignorant one may be of the therapeutic theory and practice of chiropractic, or for that matter of osteopathy, homeopathy, or any other therapeutic discipline, if an applicant can successfully pass an examination in the theory and practice of allopathy, he will be granted a license under the auspices of which he will be free to engage in the practice of the other disciplines. And this is true, despite the fact that these four major medical disciplines are admittedly fundamentally different. Under such an undisputed policy, the Medical Board would license such an applicant to subject the health of the general public to his gross incompetence as a chiropractic physician, if he chose to engage in the practice of that discipline, though not qualified as a chiropractic physician.

Thus, the undisputed evidence in this case establishes that the state law in question is not designed to test the qualification of an applicant to practice as a chiropractic physician.

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[5] See Appendix C, pp. C8-9, for transcript of testimony of former secretary of Medical Board.

The essence of the question presented then is whether or not a state can constitutionally require one wishing to practice as a chiropractic physician to first qualify as an allopathic physician.

If a chiropractic physician may be compelled to qualify as an allopathic physician before he can practice his calling, then the same requirement may be imposed at any time in respect to other professional callings. Similarly, accordingly as the legislative whim may dictate, a homeopathic physician, an osteopathic physician, an optometrist, a chiropodist, a dentist and others falling within the sweeping definition of the statute could be compelled to first qualify as allopathic physicians before they could engage in the practice of their respective callings, if the state law in question is not beyond constitutional bounds. The alarming nature of such a proposition is self-evident. Masked by the facade of such ostensible regulation, which does not regulate, a state would be empowered to enthrone allopathy, (or any other medical discipline of contemporary popularity) as generic medicine to which all others would have to pay abject homage; as king of kings, omniscient and omnipotent, infallable and unchallengable. In short, by such arbitrary legislation, a mere sect of medicine would become medicine, would be installed as the embodiment of eternal scientific verities. And, this would be accomplished on the ruins of all others seeking scientific, medical truth.

Moreover, the undisputed evidence in this case demonstrates that one can acquire knowledge of the therapeutic subjects of allopathy, only by graduating from an approved college teaching the allopathic concept of medicine. And, similarly, one can acquire knowledge of the therapeutic subjects of chiropractic only by graduating from an approved college teaching the chiropractic concept of medicine. To acquire a knowledge of both, therefore, one

must be a graduate of both colleges. Thus, such knowledge necessarily required by the condition imposed upon the chiropractic physician as administered is not obtainable by reasonable study and application.

Appellants contend that such a statutory scheme is constitutionally irrational and unreasonable. These requirements are so extravagent as to interfere with the property and personal rights of citizens, unnecessarily and arbitrarily. They bear no rational relation to the regulation of the chiropractic profession and therefore go beyond constitutional bounds.

From the early days of *Dent v. State of West Virginia*, (1889) 129 U.S. 114, 9 S.C. 231, to this date, the indefeasible right of the American citizen to engage in a lawful calling, business or profession, subject only to reasonable regulations operating on all alike, has been championed by this court as a "distinguishing feature of our republican institutions," not to be bandied about in the interplay of arbitrary powers. In DENT, it was said that the imposition of conditions that "have no relation to such calling or profession, or are unobtainable by * * * reasonable study and application," deprives one of his right to pursue a lawful calling. This insistence on a rational or reasonable relationship between the conditions imposed and the calling involved has been the constant preoccupation of this court in its adjudication of state statutes that seek to regulate in this field. The United States Court of Appeals, Fifth Circuit, summarized the national jurisprudence on this question when the instant case was before it on appeal from a dismissal of the complaint thusly:[6]

> "* * * The Supreme Court of the United States has said that a state may not regulate in this field, when the regulations

[6] England v. Louisiana State Board of Medical Examiners, 263 F. 2d 561, pp. 673-674.

'* * * have no relation to such calling or profession * * * .' *Dent v. West Virginia*, 129 U.S. 114, 122, 9 S. Ct. 231, 233, 32 L. Ed. 623.

'* * * (have) no real or substantial relation to those objects * * * .' *Jacobson v. Mass.*, 197 U.S. 11, 31, 25 S. Ct. 358, 363, 49 L. Ed. 643.

'* * * are so unreasonable and extravagant as to interfere with property and personal rights of citizens, unnecessarily and arbitrarily * * * .' *Watson v. Maryland*, 218 U.S. 173, 178, 30 S. Ct. 644, 646, 54 L. Ed. 987.

'* * * are arbitrary or unreasonable attempts to exercise the authority vested in it (legislature) in the public interest.' *Graves v. Minnesota*, 272 U.S. 425, 428, 47 S. Ct. 122, 123, 71 L. Ed. 331.

'* * * (have) no rational relation to that objective and therefore is beyond constitutional bounds.' *Williamson v. Lee Optical Company*, 348 U.S. 483, 491, 75 S. Ct. 461, 466, 99 L. Ed. 563."

The evidentiary record in this case clearly places the application of the Louisiana Medical Practice Act to chiropractors squarely within the judicial proscriptions mentioned.

(b) ***As to Question Number 2:***

The broad definition of the practice of medicine contained in the Louisiana Medical Practice Act necessarily includes within its sweep every recognizable concept of therapy. Ordinarily, therefore, every person or group of persons ministering to the sick falls within the compass of this regulation. In practice, however, this is not the case. To preserve other professions, the State Legislature has exempted from the act a variety of persons whose activities constitute the practice of medicine as defined by the statute: Midwives (Section 1276) and opticians

(Section 1261) are specially treated by the act itself; licensed dentists, homeopathic physicians, pharmacists, osteopaths, and hospital interns are excluded, as are Christian Science or religious practitioners who prescribe no drugs and perform no surgery (Section 1290); special statutes provide licenses for dentists,[7] nurses,[8] optometrists,[9] osteopaths,[10] pharmacists,[11] homeopathic physicians,[12] cosmetic therapists,[13] podiatrists.[14] Such is the statutory pattern that every regulatory board so created is manned by members of the profession concerned. No legislative provision has been made for chiropractic physicians. Consequently, they alone among all the practitioners are not exempt from the Louisiana Medical Practice Act whose sole practical function is to regulate the practice of allopathy only. As applied and enforced, however, the provisions of the act are applied against the chiropractic physician as pointed out in our discussion of Question Number 1.

Homeopathic physicians take no specified examinations. The board is required to see the diploma and examine each applicant for license on the medical subjects detailed in Section 1271, including Materia Medica and Surgery; but Section 1269 eliminates from this requirement practitioners of "the homeopathic system of medicine."

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[7] LSA-R.S. 37:751, et seq. See fully reproduced text Appendix C., *infra*, pp. C10-34.

[8] LSA-R.S. 37:911, et seq. See fully reproduced text Appendix C., *infra*, pp. C34-54.

[9] LSA-R.S. 37:1041, et seq. See fully reproduced text Appendix C., *infra*, pp. C54-64.

[10] LSA-R.S. 37:1111, et seq. See fully reproduced text Appendix C., *infra*, pp. C64-67.

[11] LSA-R.S. 37:1171, et seq. See fully reproduced text Appendix C., *infra*, pp. C68-82.

[12] LSA-R.S. 37:1311, et seq. See fully reproduced text Appendix C., *infra*, p. C82-83.

[13] LSA-R.S. 37: 491, et seq. See fully reproduced text Appendix C., *infra*, pp. C83-112.

[14] LSA-R.S. 37:611, et seq. See fully reproduced text Appendix C., *infra*, pp. C112-117.

Such homeopathic physicians have their own examining board of five members from a list recommended by the Hahnemann Medical Association of Louisiana (Section 1311). This Board is required to conduct examinations (Section 1312) but the subjects included, the hours of study, the scope and weight of such studies—on all these the law is completely silent. Apparently this board has unlimited discretion to pick and choose as it may see fit. Apparently no diploma of any kind is required, for on this, too, the law is silent. This profession, like that of the allopathic medical society, regulates itself.

Osteopaths are examined only on osteopathic subjects. The osteopaths, too, regulate themselves; their licenses come from a board of "five practicing and licensed osteopaths" (Section 1111). The subjects of examination are limited to matters directly pertinent to the practice of osteopathy: Anatomy, Physiology, Symptomatology, Chemistry, Toxicology, Minor Surgery, Principles and Practice of Osteopathy (Section 1117). It is highly significant that Materia Medica is not included! Why not? Obviously because osteopaths do not use drugs as the statute explicitly recognizes in Section 1111 defining:

> "Osteopathy means the treatment of disease, infirmity, deformity, defect, ailment or injury of a human being by manipulations applied to the nerve centers, bones, muscles or ligaments, **without the use of drugs or medicine,** except antiseptics or anodynes locally applied."

Plainly, this statute was expressly drawn to scale to determine the applicant's capacity to practice osteopathy, not some other profession. How can the state justify on any rational basis a requirement that one school of drugless healers, chiropractors, be fully examined on Materia Medica, while another such school, osteopaths, is wholly

exempt from this requirement? No basis whatever appears in the law and none exists in fact.

Optometrists practice medicine under special standards. They have a special licensing board of five practicing optometrists nominated by the State Association of Optometrists (Section 1042). Again, we see the self-regulating principle in operation. Their diploma need come only from "a school or college of optometry" approved by the board (Section 1049) and examinations are limited to subjects necessary to practice optometry (Section 1051), not any other profession.

Dentists are licensed and examined by dentists. The self-regulating pattern is carried out again in Section 753, which establishes a Board of Dentistry made up of seven qualified dentists—members of the Louisiana Dental Society. Their examination is restricted to the "Theory and Practice of the Science of Dentistry." Dentists need not take examination in brain surgery, because they have no need for such information. Likewise, they need no skill or training in Gynecology or Obstetrics. If such requirements were imposed upon dentists, we should have scant doubt of their unconstitutionality.

Title 37, Louisiana Revised Statutes, 1950 also contains licensing provisions for cosmetic therapy (Section 491, et seq. , chiropody (Section 611, et seq.), nurses (Section 911), and pharmacists (Section 1171). In every case the activities controlled constitute the practice of medicine as defined by law. In every case the licensing board represents the special professional group covered by the law. In every case the requisite diploma comes from a school teaching that specific calling, and the examinations are specifically limited to the techniques of that particular practice.

Not so for the chiropractic physician. Though his ac-

tivities as a practitioner of the healing art are in essence identical with the activities of all practitioners, within the context of the Board definition of medicine contained in the Louisiana Medical Practice Act, he alone is subject to the provision of the act, from which all his frères in the healing art are exempt. He alone must first qualify as an allopathic physician before he can practice as a chiropractic physician. Thus, though falling within the general classification of a practitioner of the healing art, he is singled out for different treatment not based on some reasonable distinction or classification. This is an infringement of his constitutional rights.

When the existence of a distinct class is demonstrated, and it is further shown that the laws, as written or as applied, single out that class for different treatment not based on some reasonable classification, the guarantees of the constitution have been violated. *Hernandez v. State of Texas*, 347 U.S. 475, 74 S. Ct. 667, 98 L. Ed. 866. Furthermore, a statute which exempts from its regulatory provisions one or a group whose activities are not substantially distinguishable from the activities of those included in the statutory classification defined is unconstitutional as a denial of equal protection of the law because invidiously discriminatory. *Morey v. Doub*, 354 U.S. 457, 77 S. Ct. 1344. The legislative pattern demonstrates a state effort to unconstitutionally exclude chiropractic physicians from the practice of their profession in a manner and for reasons that contravene the due process and equal protection clause of the Fourteenth Amendment. *Schware v. Board of Bar Examination*, 353 U.S. 232, 77 S. Ct. 752, 1 L. Ed. 2d 796.

(c) ***As to Question Number 3:***

Acting in furtherance of an invidious discrimination against chiropractic physicians, the allopathic physicians,

who exclusively enforce the provisions of the Medical Practice Act, refuse to recognize and accept a diploma from a college in good standing teaching the chiropractic sect of medicine in violation of the express text of the Act.

Section 1271 provides that:

> "Any person who wishes to practice medicine shall: * * * (4) Present to the board a diploma from a college in good standing of **ANY SECT** teaching medicine or the healing art: * * * "

Thus, the Legislature affirmatively declared what diplomas were to be accepted by the Medical Board. Inasmuch as chiropractic is a sect of medicine or the healing art then a diploma from a college in good standing teaching the chiropractic sect of medicine unarguably is contemplated by the statute. Unlike the state laws involved in *Dent v. State of West Virginia* (1889) 129 U.S. 114, 9 S. Ct. 231; *Douglas v. Noble* (1923) 261 U.S. 165, 43 S. Ct. 303, and *Graves v. State of Minnesota* (1926) 272 U.S. 425, 47 S. Ct. 122, in so providing, the Louisiana Legislature did not delegate to the Medical Board the discretionary power to determine what sects of the healing art were to be included. The Legislature affirmatively declared that **any sect** of the healing art was included.

Acting in excess of its authority the board arbitrarily supplants its judgment for that of the Legislature in this particular area of administration. By its arbitrary action it has transformed the legislative term "any sect" to mean only one sect of medicine or the healing art. It accepts only those diplomas from colleges teaching the allopathic sect of medicine. It imposes the additional restrictive condition that these colleges must be approved by the American Medical Association, a private corporation representing the professional interest of the allopathic sect of medicine only.

As applied and enforced, it specifically refuses to

recognize a diploma from a college teaching the chiropractic sect of medicine. In speaking directly to this question Dr. Lyons, Secretary of the Medical Board, testified: (Tr. p. 457, line 12, et seq.)

> "A. Does the board recognize a diploma from a chiropractic college? Is that your question?
>
> Q. That's my question.
>
> A. The answer is no."

Such action instances the exercise of purely personal and arbitrary power with the result that a chiropractic physician is compelled to hold the very means of his professional existence at the mere will of an allopathic physician. This is contrary to the supreme law of the land. It is well settled constitutional doctrine that where a legislature itself makes a finding of facts of general application and embodies it in a statute as law, as the Louisiana Legislature did in providing that the board was to recognize diplomas from colleges in good standing of any sect, which necessarily includes the chiropractic sect of medicine, the function of the administrative board is limited to declaring whether there is compliance with the requirement so declared. This principle of constitutional law was quite clearly articulated by the court in *Douglas v. Noble,* (1923) 261 U.S. 165, 169, 43 S. Ct. 303, 305, 67 L. Ed. 590.

In DOUGLAS, the court was concerned with the statute that provided that the applicant had to be a graduate of a reputable dental school and had to pass an examination touching on his qualifications. The applicant in the case argued that the act did not state in terms what the scope and character of the examination had to be, in consequence of which the statute conferred arbitrary powers and was unconstitutional. In upholding the constitutionality of the statute, this court concluded that the legis-

lature had power to delegate such authority. Significantly, however, the court emphasized that where the legislature does not delegate to an administrative board such authority, the administrative board is restricted to the conditions spelled out by the legislature. In speaking to this question Mr. Justice Brandeis, who delivered the unanimous opinion of the court said: (43 S. Ct. at p. 305)

> "The decision of that fact involves ordinarily the determination of two subsidiary questions of fact: The first, what the knowledge and skill is which fit one to practice the profession; the second, whether the applicant possess that knowledge and skill. The latter finding is necessarily an individual one. The former is ordinarily one of general application. Hence, it can be embodied in rules. The legislature itself may make this finding of the facts of general application, and by embodying it in the statute make it law. **When it does so, the function of the examining board is limited to determining whether the applicant complies with the requirement so declared.** * * * "

Inasmuch as the Louisiana Legislature affirmatively declared that the board is to recognize diplomas from a college in good standing teaching **any sect** of medicine or the healing art, its function is constitutionally limited to this legislative mandate. In simple terms, the board is limited to a determination of whether or not chiropractic is a sect of medicine, and, if so whether or not the applicant has a diploma from a college in good standing teaching chiropractic. It is without authority to emasculate this legislative provision by recognizing only one sect of the healing art. In so doing it has gone afoul of *Yick Wo v. Hopkins*, 118 U.S. 356. Eminently applicable is the language of *Coppage v. Kansas*, 236 U.S. 1 (1915):

> " * * * When a party appeals to this court for

> the protection of rights secured to him by the Federal Constitution, the decision is not to depend upon the form of the state law, nor even upon its declared purpose, but rather upon its operation and effect as applied and enforced by the state; and upon these matters this court cannot, in the proper performance of its duty, yield its judgment to that of the state court. *St. Louis, S.W.R. Company v. Arkansas*, 235 U.S. 350, 362, and cases cited."

Applying these principles to the case at bar makes out a clear violation of constitutional rights in the administration of the statute and its application to plaintiffs.

(d) ***As to Question Number 4:***

As enforced and applied, the Medical Practice Act seeks to compel chiropractic physicians to stand examination in therapeutic subjects that exclusively relate to the allopathic concept of therapy. This is an undisputed fact already discussed under Question Number 1. As enforced and applied, the board charged with the administration of the Act goes beyond the text of the statute and refuses to recognize a diploma from a college in good standing teaching the chiropractic sect of medicine. It is appellants' additional contention that they are denied due process because the medical board in question is composed exclusively of doctors of allopathy who admittedly hate and despise doctors of chiropractic and who officially have a direct financial and professional interest in the suppression of chiropractors.

The Medical Practice Act specifies in Section 1262 that the Board shall consist of five members to be appointed by the Governor from a list recommended by the Louisiana State Medical Society. This Society has intervened as a party defendant in this action. The Act further provides that the members shall be graduate physicians or surgeons

and practitioners. The evidence establishes that the officials who administer and enforce the Medical Practice Act are selected by the House of Delegates of the allopathic State Medical Society for recommendation to the Governor. This board thus represents the allopathic State Medical Society and its members, all practicing physicians representing a particular school of thought on professional matters, and having in common the economic and professional impetus to exclude nonmembers of their professional society and those who differ from them in therapeutic theory.

That defendants hate and despise appellants is made abundantly clear by the voluminous exhibits made part of the evidentiary record in this case. These documents record unsurpassed vitriol and hatred expressed by defendants and members of their society. In fact appellants are hated with such passion that members of the allopathic society have sought to introduce legislation that would make the practice of chiropractic in Louisiana a penitentiary offense.

The Board has no appropriation of public funds but derives its revenues from license and renewal fees paid by acceptable applicants, and ad hoc penalties of $100 for which it may demand judgment against violators of the Act by civil suit. In addition, the fees of counsel and costs of proceedings, must be paid by the Board from its own funds, and to this end, attorneys' fees up to $50, plus costs, are recoverable in civil suits.

Treating the due process concept as one of fundamental fairness in legal relationships, it must be plain that the administration of this statute can never rest upon even-handed justice, impartial and unbiased evaluation. The sole source of the compensation payable to Board members, as well as hotel and travel expenses, is in the funds of the

Board as above described. If the Board's funds should be inadequate to pay its members and reimburse their expenses, what could be simplier than to institute more civil suits to restrain chiropractors? Collect more hundred-dollar bills under the eager acquisitive instinct of an attorney who gets $50 for each new lawsuit? The Board members have a distinct, direct, unequivocal personal interest in administering the statute to exclude whom they may and bring legal actions against such persons to raise operating revenue.

Under no circumstances can this be deemed a compliance with known concepts of due process. This question of fairness in administration as constituting due process, in no sense depends upon what is actually done, but what the statute authorizes. *Coe v. Armour Fertilizer Works*, 237 U.S. 413 (1915). Measured by this yardstick, the statute is plainly a denial of fairness and justice, therefore of due process, as applied to chiropractors.

(e) ***As to Question Number 5:***

The definition of the practice of medicine contained in the Medical Practice Act of Louisiana is so sweepingly broad as to include within its compass practically any activity whatever that is proclaimed to relieve, ameliorate or cure any physical or psychic ailment whatever. The broad reach of this statutory expression is such as not adequately to inform what is and what is not the practice of medicine. This definition is so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application. For that reason, it operates to deny liberty without due process and is unconstitutional. *Connally v. General Construction Co.*, 269 U.S. 385; *Lanzetta v. New Jersey*, 269 U.S. 385; *Stromberg v. California*, 283 U.S. 359; *Lovell v. City of Griffin*, 303 U.S. 444, 58

S. Ct. 666, 82 L. Ed. 949.

Alternatively, appellants contend that the Medical Practice Act in question instances a legislative pursuit by means that broadly stifle fundamental personal liberties, where the legislative objective can be more narrowly achieved, in consequence of which appellants' constitutional rights are denied.

There is no dispute that allopathy and chiropractic are sects of the healing art which are fundamentally different in point of therapy. There is no dispute that under Section 1271 an applicant for a license to practice any sect of the healing art must stand an examination, inter alia, in the "Theory and Practice of Medicine, Materia Medica, and Surgery." There is no dispute that as enforced and applied, these subjects relate exclusively to the allopathic concepts of therapy. There is no dispute that only colleges teaching allopathy teach such subjects. There is no dispute that the Board of Medical Examiners will accept only diplomas from colleges teaching allopathy and approved by the American Medical Association. Finally, there is no dispute that before a chiropractic physician can be licensed to practice as such, he must first qualify as an allopathic physician and have a diploma from an allopathic college approved by the American Medical Association. Thus, as applied and enforced, the means used to regulate the practice of chiropractic broadly stifle fundamental personal liberties unnecessarily. The regulation of the practice of chiropractic can be more narrowly achieved.

The legislative pattern in Louisiana instances a less drastic means for achieving the same basic objective. The Louisiana Legislature has enacted special legislation for the regulation of the different medical practitioners. Special licensing laws have been enacted for dentists, nurses,

optometrists, osteopaths, pharmacists, chiropodists and homeopathic physicians. None of these is required to first qualify as allopathic physicians before he may engage in his individual practice. These statutes are expressly drawn to scale to determine the applicant's capacity to practice his chosen calling and not some other profession. It is significant that the State of Louisiana has experienced no difficulty whatever in regulating osteopathy, a sect of the healing art closely approximating the therapeutic procedures of chiropractic. This professional calling, as well as the many others, has been effectively regulated without requiring these practitioners to stand an examination in allopathic theory and practice, materia medica and surgery and without requiring them to produce a diploma from a college teaching the allopathic sect of medicine and approved by the A.M.A. In this respect an osteopathic physician is required only to be a graduate "from a legally chartered osteopathic school in which the term of study is at least four scholastic years of nine months each." (Section LSA-R.S. 37:1117)

Inasmuch as "the breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose," *Shelton v. Tucker*, 364 U.S. at 488, 81 S. Ct. at 252, it is apparent that the legislative abridgment in the case at bar is oppressively real and results solely from the excessive means employed for achieving the regulation of the practice of chiropractic. The practice of chiropractic may be effectively regulated by the enactment of legislation that would require an examination of applicants in subjects that are reasonably pertinent to the Science of Chiropractic. Under the provisions of the present Medical Practice Act, as applied and enforced against chiropractic physicians, the means adopted are unreasonably broad and result in a denial of constitutional

rights. The Medical Practice Act therefore falls afoul of the familiar and basic constitutional principle to the effect that even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. *Aptheker v. Secretary of State*, 378 U.S. 500, 84 S. Ct. 1659; *NAACP v. Alabama*, 377 U.S. 288, 84 S. Ct. 1302; *NAACP v. Button*, 371 U.S. 415, 83 S. Ct. 328, 9 L. Ed. 2d 405; *Louisiana, ex rel, Gremillion v. NAACP*, 366 U.S. 293, 81 S. Ct. 1333, 6 L. Ed. 2d 301. *Shelton v. Tucker*, 364 U.S. 479, 81 S. Ct. 247, 5 L. Ed. 2d 231.

CONCLUSION

The scope and breadth of the individual's freedom protected against state action by the Fourteenth Amendment exist in a new dimension today.[15] While it was ac-

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[15] For the most part appellants' right to professional existence was determined by constitutional standards of 19th Century vintage. In the light of the expanded notion of personal liberty, exemplified by more recent cases, a different result appears impelling. Examples of this trend are related to instances where provisions of the first several amendments to the Constitution, traditionally considered to lay constraints only upon the national government, have been held to be obligatory upon the states by the provisions of the Fourteenth Amendment. E.G.: The First Amendment's Freedoms of Speech, Press, Religion, Assembly, Association and Petition for Redress of Grievances, has been held to be obligatory on the State through the Fourteenth Amendment. *Gitlow v. New York*, 268 U.S. 652, 666, 45 S. Ct. 625, 629, 69 L.Ed. 1138 (1925); *Lovell v. City of Griffin*, 303 U.S. 444, 450, 58 S.Ct. 666, 668, 82 L.Ed. 949 (1938); *Staub v. City of Baxlov*, 355 U.S. 313, 321, 78 S.Ct. 277, 281, 2 L.Ed. 2d 302 (1958), *Gusjean v. American Press Co.*, 297 U.S. 233, 244, 36 S.Ct. 444, 446, 80 L.Ed. 660 (1936): *Cantwell v. Connecticut*, 310 U.S. 296, 303, 60 S. Ct. 900, 983, 84 L.Ed. 1213 (1940); *De Jouge v. Oregon*, 299 U.S. 353, 364, 57 S. Ct. 255, 259, 81 L.Ed. 278 (1937); *Shelton v. Tucker*, 364 U.S. 479, 486, 488, 81 S.Ct. 247, 251, 252, 5 L. Ed. 2d 231 (1960); *Louisiana ex rel., Gremillion v. NAACP*, 366 U.S. 293, 296, 81 S.Ct. 1333, 1335, 6 L.Ed. 2d, 301 (1961); *Edwards v. South Carolina*, 372 U.S. 229, 83 S. Ct. 680 (1963). Similarly the commands of the Fifth Amendment were made obligatory on the states. *Chicago, B & O Railroad Co. v. Chicago*, 166 U.S. 226, 235-241, 17 S.Ct. 584-586, 41 L. Ed. 979 (1897); *Smyth v. Ames*, 169 U.S. 466, 522-526, 18 S. Ct. 418, 424-426, 42 L. Ed. 819 (1890). Likewise the Fourth Amendment's prohibition of unreasonable searches and seizures, *Wolf v. Colorado*, 338 U.S. 25, 27-28, 69 S.Ct. 1359, 1361, 93 L.Ed. 1782 (1949); *Elkins v. United States*, 364 U.S. 206, 213, 80

Continued

ceptable constitutional doctrine in 1876 to remit the people to the "polls" for redress of grievances resulting from legislative abuses, *Munn v. Illinois*, 94 U.S. (4 Otto) 113, 134, it is not so today. A citizen's constitutional rights cannot be infringed simply because a majority of the people choose to do so. *Lucas v. 44th General Assembly of the State of Colorado*, 377 U.S. 713, 84 S. Ct. 1459. Despite LUCAS, the three judge district court has remitted appellants to the polls for redress. If this be their final avenue of recourse, they are doomed to oblivion. At the polls they must do battle with the great medical autocracy, the American Medical Association. This is the same powerful collection of allopathic physicians which challenged the national government on Medicare and which arbitrarily resists all changes and advancements in the medical field not of its own creation.

For over forty years now the allopathic physicians of Louisiana have successfully "persuaded" the Legislature not to enact legislation that would permit the chiropractic profession to have its own board for the proper and effective regulation of chiropractic physicians, as it has granted to all other professional callings. There is nothing apparent to suggest that this intolerable condition will not continue for at least forty more years, if plaintiffs should fail in this appeal.

The evidentiary record in this case squarely places the administration of the Medical Practice Act against appellants afoul of their constitutional liberties. The judgment appealed from, therefore, should be reversed and injunctive

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[15] (Continued)
S. Ct. 1437, 1441, 4 L. Ed. 2d 1669 (1960); *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S. Ct. 1684, 1691, 6 L. Ed. 2d 1081 (1961), and the Eight Amendment's proscription on cruel and unusual punishment, *Robinson v. California*, 370 U.S. 660, 686, 82 S.Ct. 1417, 1420, 8 L.Ed. 2d 758 (1962). And lastly, the Sixth Amendment's guarantee of counsel. *Gideon v. Wainwright*, 83 S. Ct. 792 (1963).

relief prayed for granted.

Respectfully submitted,

J. MINOS SIMON,
Post Office Box 52116 OCS,
Lafayette, Louisiana,
Attorney for Plaintiffs-Appellants.

FLOYD J. REED,
919 Maison Blanche Building,
New Orleans, Louisiana,
Attorney for Plaintiffs-Appellants.

Of Counsel:
SIMON, TRICE & MOUTON,
Attorneys at Law,
1408 Pinhook Road,
Post Office Box 52116 OCS,
Lafayette, Louisiana,

REED, REED AND REED,
Attorneys at Law
9th Floor,
Maison Blanche Building,
New Orleans, Louisiana.

PROOF OF SERVICE

I, J. Minos Simon, one of the attorneys for plaintiffs, appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ---------- day of ----------, 1966, I served copies of the foregoing Statement as to Jurisdiction on the several parties hereto as follows:

1. On the Louisiana State Board of Medical Examiners, et al, defendants, by mailing copies in a duly addressed envelope, with first class postage prepaid, to their attorneys of record, W. Ford Reese, Esquire, Adams and Reese, Attorneys at Law, 1808 National Bank of Commerce Building, New Orleans, Louisiana, and Robert F. LaCorgne, Jr., Esquire, Attorney at Law, National Bank of Commerce Building, New Orleans, Louisiana.

2. On Louisiana State Medical Society, intervenor, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to its attorneys of record, Phelps, Dunbar, Marks, Claverie & Sims, Esquire, 420 Hibernia Bank Building, New Orleans, Louisiana.

J. MINOS SIMON,
Post Office Box 52116 OCS,
Lafayette, Louisiana,
Attorney for Plaintiffs-Appellants.

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APPENDIX A

Nov 17 Rec'd
U. S. District Court
Eastern District of Louisiana
Filed Nov 9 1965
A. Dallam O'Brien, Jr.
Clerk WBJ

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

JERRY R. ENGLAND et al.
Plaintiffs

v.

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS et al.
Defendants

CIVIL ACTION
No. 9292-A

Simon, Trice & Mouton, Lafayette, Louisiana
J. Minos Simon

Reed, Reed, Reed & Garvey, New Orleans, Louisiana
Floyd J. Reed

Attorneys for Plaintiffs

Adams & Reese, New Orleans, Louisiana
W. Ford Reese
Robert F. LeCorgne, Jr.
Joel L. Borrello
Thomas Wyllie

Attorneys for Defendants

Phelps, Dunbar, Marks, Claverie & Sims
Ashton Phelps
Blake West

Attorneys for Intervenor, Louisiana State Medical Society

Before: JONES and WRIGHT,* Circuit Judges, and CHRISTENBERRY, District Judge

WRIGHT, Circuit Judge:

Plaintiffs are chiropractors practicing their profession in the State of Louisiana. In this litigation[1] they seek an injunction prohibiting the Louisiana State Board of Medical Examiners from enforcing the licensing provisions of the Louisiana Medical Practice Act[2] against them. After a full trial on the merits, we conclude that the application for injunction must be denied and this case dismissed.

The Louisiana Medical Practice Act has a general licensing provision applicable broadly to practitioners of the healing arts. It first defines "the practice of medicine, surgery, or midwifery" as "the holding out of one's self to the public as being engaged in the business of diagnosing, treating, curing, or relieving any bodily or mental

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* Of the District of Columbia Circuit, sitting by designation.

[1] Thanks to the abstention doctrine, this case has been a long time making its way through the courts. In 1957 this court, acting through one judge, dismissed the complaint. The Fifth Circuit reversed, one judge dissenting. *England v. Louisiana State Board of Medical Examiners*, 5 Cir., 259 F.2d 626 (1958), *rehearnig denied*, 263 F.2d 661, *cert. denied*, 359 U.S. 1012 (1959). On remand, this three-judge court abstained. *England v. Louisiana State Board of Medical Examiners*, E.D.La., 180 F.Supp. 121 (1960). The First Circuit Court of Appeal of Louisiana affirmed the judgment of the state trial court against plantiffs and the Supreme Court of Louisiana denied an application for a writ of *certiorari*. *England v. Louisiana State Board of Medical Examiners*, La. App., 126 So. 2d 51 (1960). This court then dismissed the complaint for the second time on the ground that it was without authority to review the state court action. *England v. Louisiana State Board of Medical Examiners*, E.D. La., 194 F. Supp. 521 (1961). The Supreme Court reversed and remanded for a trial in the federal court on the merits of the constitutional issue. *England v. Medical Examiners*, 375 U.S. 411 (1964).

[2] La. R.S. 37:1261 *et seq.* (1964).

FEE
PROCESS
X CHARGE
INDEX
√ ORDER
√ HEARING
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disease, condition, infirmity, deformity, defect, ailment, or injury in any human being other than himself whether by the use of any drug, instrument or force, whether physical or psychic, or of what other nature, or any other agency or means; or the examining, either gratuitously or for compensation, of any person or material from any person for such purpose whether such drug, instrument, force, or other agency or means is applied or used by the patient or by another person * * * ." La. R.S. 37:1261.

After thus defining its coverage, the Louisiana Medical Practice Act then prohibits any person from practicing medicine unless he possesses a certificate issued under the Act. Qualifications for obtaining a certificate, in addition to being a citizen of the United States, of good moral character and 21 years of age or over, are that the applicant must present to the Louisiana State Board of Medical Examiners, defendants herein, a diploma "from a college in good standing of any sect teaching medicine or the healing art" and "[p]ass an examination before the Board upon the following: Anatomy, Physiology, Chemistry, Physical Diagnosis, Pathology and Bacteriology, Hygiene, Surgery, Theory & Practice of Medicine, Materia Medica, Obstetrics, and Gynecology." La. R.S. 37:1271 (1964).

In addition to the Medical Practice Act, the Legislature of Louisiana has passed special statutes outlining qualifications and licensing procedures for the practice of certain specialties related to medicine such as dentistry,[3] optometry,[4] pharmacy,[5] osteopathy,[6] podiatry,[7] homeopathy,[8] and nursing.[9] Persons qualifying under one of these

[3] La. R.S. 37:751 *et seq.* (1964).
[4] La. R.S. 37:1041 *et seq.* (1964).
[5] La. R.S. 37:1171 *et seq.* (1964).
[6] La. R.S. 37:1111 *et seq.* (1964).
[7] La. R.S. 37:611 *et seq.* (1964).
[8] La. R.S. 37:1311 *et seq.* (1964).
[9] La. R.S. 37:911 *et seq.* (1964).

special acts are exempted from the requirements of the Medical Practice Act. Thus any person practicing a healing art in Louisiana must qualify and be licensed under one of the special statutes or under the general licensing provisions of the Medical Practice Act.

There is no special statute covering chiropractic. As interpreted by the Board, persons desiring to practice chiropractic in the State of Louisiana must qualify under the provisions of the Medical Practice Act, including the provision requiring a diploma from a medical school and a test before the Board in, among other things, *materia medica* and surgery. It is the position of the plaintiffs that, as chiropractors, they have no concern with *materia medica* and surgery and, consequently, should not be required, in order to practice their profession, to graduate from an approved medical schoool and be proficient in *materia medica* and surgery. Chiropractic, according to the plaintiffs, is an independent, complete, drugless healing art, basically unrelated to medicine, and to require them to qualify under the Medical Practice Act when other healing arts are relieved of this responsibility is to work an invidous discrimination against them in violation of the Equal Protection and Due Process Clause of the Fourteenth Amendment.

As broadly defined by its proponents, chiropractic is a healing art designed to relieve human ailments by manipulation and adjustment of the spine. It is chiropractic doctrine that most, if not all, human ailments result from a slight misalignment, or subluxation, of contiguous vertebrae. This subluxation tends to impinge on nerves emanating from the spinal cord through apertures in the vertebrae. As a result of the impingement, the innervation to the parts of the body served by the impinged nerve is abnormally altered, and such parts become diseased or pre-

disposed to disease. The realignment of these subluxated vertebrae through manipulation of the spine by the chiropractor removes the impingement and restores the nerve function to the diseased parts of the body.[10] Chiropractic science postulates that the commonly accepted causes of disease, such as viruses and germs, are merely secondary factors acting on parts of the body already predisposed to disease by nerve impingement. Thus disease results from a lack of resistance to the viruses and germs which are always present in the body.[11]

There seem to be two schools of chiropractic. The members of the International Chiropractic Association apparently believe that there is one cause of disease—subluxation of the vertebrae—and one cure—manipulation of the spine to relieve the subluxation. The American Chiropractic Association, while not as absolute in its approach to the problem of disease, nevertheless feels that chiropractic is a complete and independent healing art which not only can prevent disease, but can cure disease if the manipulation of the spine begins in time.

With one possible exception,[12] all of the legal issues presented in this case were decided adversely to plaintiffs in *Louisiana State Board of Medical Examiners v. Fife*, 162 La. 681, 111 So. 58 (1926), *affirmed*, 274 U.S. 720 (1927). It was there decided, under the very Act in suit,

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[10] JANSE, HOUSER & WELLS, CHIROPRACTIC PRINCIPLES AND TECHNIC, Chapter II (2d ed. 1947); see also LOGAN, BASIC METHODS 5-14 (Logan & Murray ed. 1950).

[11] JANSE, HOUSER & WELLS, *op. cit. supra* Note 10, Chap. IV; see also LOGAN, *op. cit. supra* Note 10, 216-217.

[12] The court's opinion in *Fife* does not explicitly treat the "diploma from a college in good standing" requirement of the Act or the delegation of the determination of "good college" to the Board. Apparently this issue was not pressed because of the then recent decision in *Graves v. Minnesota*, 272 U.S. 425 (1936), which specifically upheld against constitutional attack a similar requirement in a Minnesota statute. See *Douglas v. Noble*, 261 U.S. 165 (1923); *Dent v. West Virginia*, 129 U.S. 114 (1889). See also *Louisiana State Board of Medical Examiners v. Beatty*, 220 La. 1, 55 So. 2d 761 (1951).

that chiropractors are covered by the Medical Practice Act and that the *materia medica* and surgery requirement as applied to them is constitutionally unassailable. *Fife* also held that the fact that other Louisiana statutes exempted certain medical specialities from compliance with the general licensing requirements of the Medical Practice Act did not violate the Equal Protection Clause.

This court originally dismissed this case on the authority of *Fife*. The Fifth Circuit Court of Appeals, however, in reversing that ruling, stated that in the 30-odd years since *Fife*, enormous progress has been made in the healing arts, and that it was unable to say, without a full evidentiary hearing on the merits, whether chiropractic is "no more entitled to recognition today than it was thirty odd years ago." *England v. Louisiana State Board of Medical Eaminers, supra* Note 1, 259 F. 2d at 627. The court pointed out that chiropractic had been legalized as such in 44 (now 46) states and the District of Columbia, and that such requirements as a diploma from a college approved by the American Medical Association may at this time be an unconstitutional imposition on the rights of chiropractors. In remanding for a trial on the merits, the court recognized that "the burden upon the plaintiffs is great, if not insurmountable. They must show that the Act as administered 'has no rational relation' to the regulation of chiropractic and 'therefore is beyond constitutional bounds.'" *England v. Louisiana State Board of Medical Examiners, supra* Note 1, 263 F. 2d at 661.

Our mandate then, after hearing the evidence, is to determine whether in 1965 it is irrational and unreasonable for the Louisiana Legislature still to require chiropractors to comply with the licensing provisions of the Medical Practice Act before being allowed to practice their profession in Louisiana. We approach resolution of this

problem fully cognizant of "the principle that the State is primarily the judge of regulations required in the interest of public safety and welfare, and its police statutes may only be declared unconstitutional where they are arbitrary or unreasonable attempts to exercise the authority vested in it in the public interest." *Graves v. Minnesota, supra* Note 10, 272 U.S. at 428.

At the outset it should be noted that the laws of the State of Louisiana do not prohibit the practice of chiropractic. As a matter of fact, as this record shows, one chiropractor complied with the provisions of the Medical Practice Act and subsequently practiced chiropractic in the state. The question here is: May Louisiana require a chiropractor to obtain what is in effect a medical education from an approved medical school before he may practice his profession in the state?

It is clear that the Louisiana Legislature is fully cognizant of the problems which confront the chiropractor with reference to compliance with the Medical Practice Act. Time and again efforts have been made by the chiropractors to have a special statute passed which would provide a licensing procedure for them similar to those provided for other specialties in the healing arts. What has been the motivation of the Legislature in refusing to pass such legislation is, of course, a matter of conjecture. Plaintiffs suggest it is that the lobby of the Louisiana Medical Association is more powerful and effective than theirs. This may be true. It may also be true that, since chiropractic claims to be a complete and independent healing art capable of curing almost all kinds of disease, the Legislature may have felt that the requirement of a foundation in *materia medica* and surgery, even for chiropractors, would be a protection to the public. Perhaps also the Legislature concluded that a knowledge of these subjects would

assist chiropractors in diagnosing disease and determining in specific cases whether or not the disease was too far advanced for successful treatment by chiropractic ministrations. This is not an unreasonable or irrational consideration, because the plaintiffs' own evidence indicates that the teaching of one school of chiropractic, that favored by the American Chiropractic Association, suggests reference of certain cases to medical practitioners where the disease is no longer subject to successful treatment by manipulation of the spine. The Legislature, of course, is certainly cognizant of the fact that, with respect to some diseases, delay in proper treatment may be fatal.

The Legislature may also have been impressed by the fact that there is no school in the United States accredited to teach chiropractic, even by the accrediting committee of the American Chiropractic Association. In fact, the Director of Education of the American Chiropractic Association states:

> "None of the ACA colleges is fully 'Accredited' as yet. For none meets all of the standards. As was indicated earlier in this report, this is in no small part due to lack of available funds for upgrading purposes.
>
> "The Accreditation Committee [of the American Chiropractic Association] has been guided not only by its strict interpretation of the Standards, but by what is required for accreditation of schools of podiatry, optometry, nursing and osteopathy. All of these kindred or associated fields in the healing arts have had their accrediting agencies accepted by the U. S. Office of Education, hence they furnish a useful guideline for our efforts toward the same ends." *Anderson, Report: The Issues Confronting the Delegates and Members of the American Chiropractic Association as They Seek to Solve the Problems of Chiropractic Education* 32 (1964).

If the education obtained in chiropractic schools does not meet the standards of the American Chiropractic Association and the United States Office of Education, it may well be that the Legislature of Louisiana felt that in the public interest a diploma from an approved medical school should be required of a chiropractor before he is allowed to treat all the human ailments chiropractors contend can be cured by manipulation of the spine. Other considerations, suggested by the record in this case, possibly affecting the legislative judgment could be stated. Suffice it to say that on this record we are unable to hold that the Legislature of Louisiana has acted irrationally and unreasonably in the premises.

It may well be that chiropractic is a useful profession and that the requirement of a medical education for chiropractors is not in the public interest. But the "balanc[ing of] the advantages and disadvantages of [this] requirement," *Williamson v. Lee Optical Co.*, 348 U.S. 483, 487 (1955), is for the legislature. And, ordinarily, "[f]or protection against abuses by legislatures the people must resort to the polls, not to the courts." *Munn v. Illinois*, 94 U.S. (4 Otto) 113, 134 (1876). For "[t]he day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought." *Williamson v. Lee Optical Co.*, *supra*, 348 U.S. at 488.

We are not unaware that the state in undertaking its obligation to protect the public must adopt those means which trench least on fundamental private rights, including the right to practice one's profession. "[E]ven though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly

stifle fundamental personal liberties when the end can be more narrowly achieved." *Shelton v. Tucker*, 364 U.S. 479, 488 (1960). But there has been no showing here that the state has done more than is necessary to protect the health of its citizens. A difference of opinion as to whether one who purports to practice a complete healing art should have a medical education is not proof of unreasonable disregard of plaintiffs' rights.

Injunction denied and complaint dismissed.

/s/ WARREN L. JONES
UNITED STATES CIRCUIT JUDGE

//s J. SKELLY WRIGHT
UNITED STATES CIRCUIT JUDGE

/s/ HERBERT W. CHRISTENBERRY
UNITED STATES DISTRICT JUDGE

New Orleans, Louisiana
November 9, 1965

APPENDIX B

LOUISIANA REVISED STATUTE 37:1261

Sec. 1261. *Definitions*

As used in this Part, "the practice of medicine, surgery, or midwifery" means the holding out of one's self to the public as being engaged in the business of diagnosing, treating, curing, or relieving any bodily or mental disease, condition, infirmity, deformity, defect, ailment, or injury in any human being other than himself whether by the use of any drug, instrument or force, whether physical or psychic, or of what other nature, or any other agency or means; or the examining, either gratuitously or for compensation, of any person or material from any person for such purpose whether such drug, instrument, force, or other agency or means is applied or used by the patient or by another person; or the attending of a woman in childbirth without the aid of a licensed physician, surgeon or midwife; or the using of any other title other than optician, to indicate that he is engaged in the business of refracting or fitting glasses to the human eye.

Sec. 1262. *Louisiana State Board of Medical Examiners; appointment*

The Louisiana State Board of Medical Examiners is created.

The board shall consist of five members appointed by the governor from a list of names recommended by the Louisiana State Medical Society.

All members of the board shall be graduate physicians or surgeons and practitioners.

Sec. 1263. *Vacancies; removal*

The governor shall fill all vacancies on the board from recommendations made according to R.S. 37:1262.

The governor may remove any member of the board for inefficiency or neglect of duty.

Sec. 1264. *Term of members*

Each member of the board shall serve for the term of six years.

Sec. 1265. *Meetings of board*

The regular meetings of the board shall be held at least twice in each year in the city of New Orleans. A special meeting of the board may be called by the president at any place when a majority of the board, or its president, deems it expedient. The call shall be issued by the secretary-treasurer.

Sec. 1266. *Quorum*

Three members of the board constitutes a quorum for all purposes including the holding of examinations and the granting of certificates.

Sec. 1267. *Compensation and expenses of members of board*

The members of the Louisiana State Board of Medical Examiners shall receive ten dollars per day during their session and also their hotel and traveling expenses if traveled by the most direct route to and from their respective places of residence. These expenses shall be paid out of the treasury of this board upon the certificates of the president and secretary-treasurer.

Sec. 1268. *Receipts and disbursements*

All monies collected by the Louisiana State Board of Medical Examiners shall be deposited in the treasury of the board.

All expenses and compensation of members shall be paid out of the funds of this board only and shall never be a charge on the state.

Sec. 1269. *Duties and powers of the board*

A. The board shall:

(1) Examine all applicants for the practice of medicine other than the homeopathic system of medicine;

(2) Have its seal;

(3) Report to the prosecuting officer of the state all persons violating the provisions of this Part.

B. The board may:

(1) Select officers and adopt rules and by-laws necessary for the efficient operation of the board;

(2) Authorize any member of the board to make any affidavit necessary to the issuance of any injunction or other legal process authorized under this Part; and

(3) Employ counsel to carry out the provisions of this Part, if the fees of the counsel and the costs of all proceedings, except criminal prosecutions, are paid by the board out of its own funds.

C. The president and secretary of the board may administer oaths in the taking of testimony upon any matters appertaining to the duties of the board.

Sec. 1270. *Certificate to practice medicine or midwifery required*

No person shall practice medicine or midwifery in any of its departments unless he possesses a certificate issued under this Part and duly recorded.

Sec. 1271. *Qualifications of applicants*

Any person who wishes to practice medicine shall:

(1) Be twenty-one years of age;

(2) Be a citizen of the United States;

(3) Be of good moral character;

(4) Present to the board a diploma from a college in good standing of any sect teaching medicine or the healing arts; and

(5) Pass an examination before the board upon the following: Anatomy, Physiology, Chemistry, Physical Diagnosis, Pathology, and Bacteriology, Hygiene, Surgery, Theory & Practice of Medicine, Materia Medica, Obstetrics, and Gynecology.

Sec. 1272. *Examinations to be in writing and kept as records*

All examinations given by the board and the answers of applicants shall be in writing, and shall be kept as records for a period of two years.

Sec. 1273. *Issuance of certificate*

If the requirements of R.S. 37:1271 are met to the satisfaction of the board, the board shall issue to the applicant a certificate to practice medicine.

Sec. 1274. *Temporary permits to naturalized citizens*

The board may issue a temporary permit to practice medicine to one who has taken out his first naturalization

papers and who complies with the other requirements of this Part.

Sec. 1275. *Other states, certificate of examination*

The board may waive examination in favor of any applicant who presents to the board a satisfactory certificate of examination from a board of medical examiners of another state if the board finds that the certificate of examination from the board of medical examiners of another state was received on the equivalent of "Class A College standard American Medical Association."

Sec. 1276. *Midwifery; examination; certificate*

All persons who wish to practice midwifery shall appear before the Louisiana State Board of Medical Examiners and stand an examination in midwifery as the board requires. If the examination is satisfactory, the board shall issue a certificate to practice midwifery.

The Louisiana State Board of Medical Examiners may allow one member of the board to conduct the examination for midwifery, and if the applicant passes this examination, he shall be entitled to be authorized by the board to practice midwifery.

Sec. 1277. *Temporary permits*

One member of the board may grant a permit to any applicant after a satisfactory examination and shall report this immediately to the secretary-treasurer. This temporary permit shall not continue in force longer than until the next regular meeting of the board and shall not be granted in violation of any rule of the board.

In addition, the board may grant a temporary permit to any doctor of medicine who meets the requirements of the board, if such applicant is serving as a first year in-

tern, or is in a one, two, three or four year residency or graduate medical training program, provided such residency, internship or training program is approved by the board, in any public or private hospital in this state. Such temporary permit may be renewed annually, not to exceed four years. As amended Acts 1956, No. 380, Sec. 1.

Sec. 1278. *Certificate, conclusive proof of*

The certificate issued by the board shall be conclusive proof of the efficiency of the holder thereof.

Sec. 1279. *Recording of certificate; cancellation*

Every person issued a certificate under this Part and before he begins practice shall personally have his certificate recorded with the clerk of court in the parishes in which he desires to practice. The clerk of court shall make this recordation in a book to be kept for that purpose only and shall also certify to the recordation by an endorsement of the certificate. He shall be entitled to a fee of one dollar for recording. Until the recordation is made the holder of the certificate shall not exercise any of the rights or privileges conferred by it.

Upon notification from the secretary-treasurer of the board of the suspension or revocation of a certificate, the clerk of court where the certificate was recorded shall cancel such recordation.

Sec. 1280. *Renewals*

Every certificate issued under this Part shall be renewed annually on or before January first upon payment of the renewal fee prescribed in R.S. 37:1281.

Sec. 1281. *Fees*

The board may charge the following fees:

(1)	Examination fee for practice of medicine	$25.00
(2)	Examination fee for midwives	10.00
(3)	Fee for issuing certificates	2.00
(4)	Temporary permit fee	10.00
(5)	Interns, resident and graduate medical training temporary permit fee	5.00
(6)	Renewal fee of any certificate except the reneway fee of an interne or a person enjoying a residency in an approved hospital	10.00
(7)	Renewal fee of any certificate for an interne or a person enjoying a residency in any approved hospital	2.00

The temporary permit fee shall be credited to the applicant when he applies to the board for permanent certificate. As amended Acts 1952, No. 53, Sec. 1; Acts 1954, No. 693, Sec. 1; Acts 1956, No. 379, Sec. 1.

Sec. 1282. *Annual publication of list of certificate holders; evidence*

The Louisiana State Board of Medical examiners shall publish annually a list of the names and residences of the holders of certificates issued under this Part. This published list shall be received in evidence by the courts as proof that the individual named are duly registered. The board may strike from this list the name of any person whose certificate has been suspended or revoked.

The secretary-treasurer of the Louisiana State Board of Medical Examiners shall furnish the State Board of Health and the Federal Internal Revenue Department an annual published list referred to in this Section and also

a list of the successful applicants to whom certificates are issued.

Sec. 1283. *Reports by board*

The board shall report annually to the governor upon the condition of the practice of medicine in the state, make recommendations for the improvement of the practice, and send a record of the proceedings of the board during the year, together with the names of all physicians or surgeons to whom the board issued certificates during the year under R.S. 37:1273.

Sec. 1284. *Provisions relative to unlicensed physicians*

Unlicensed Physicians shall not be exempt from jury or military duty, or be permitted to collect any fees or charges for services rendered, or be allowed to testifiy as a medical or surgical expert in any court, or execute any certificates as a physician or surgeon, or hold any medical office, or be recognized by the state or parish or municipal corporation as a physician or surgeon; or be entitled to enjoy any of the privilegs, rights, or exemptions granted to physicians or surgeons by the laws of this state.

Sec. 1285. *Causes for refusal to issue, suspension or revocation certificates*

The board may refuse to issue, suspend, or institute proceedings in any court of competent jurisdiction to revoke any certificate issued under this Part for any of the following causes:

(1) Conviction of a crime;

(2) Fraud, deceit, or perjury in obtaining a diploma or certificate;

(3) Habitual drunkeness;

(4) Habitual use of morphine, opium, cocaine, or other drugs having a similar effect;

(5) Prescribing a cocaine, morphine, or other habit forming drugs in other than a legal or legitimate manner;

(6) Procuring, aiding or abetting in procuring an abortion unless done for the relief of a woman whose life appears in peril after due consultation with another licensed physician; or

(7) Advertising means or medicine whereby monthly periods can be regulated or re-established;

(8) Advertising special ability to treat or cure chronic or manifestly incurable disease;

(9) Efforts to deceive or defraud the public;

(10) Impersonation of another licensed practitioner;

(11) Incompetence;

(12) Having professional connection with or lending one's name to an illegal practitioner; or having any professional connection with any person convicted under the provision of this section.

(13) Employing solicitors or subsidizing agencies, or paying or presenting any person money or anything of value for the purpose of securing patients;

(14) Persistent violation of federal and state law relative to control of social diseases;

(15) Interdiction by due process of law;

(16) Violation of any provisions of this Part.

Any certificate revoked may be reinstated by the board.

Sec. 1286. *Injunction; penalty; attorney's fees; costs*

The board through its proper officer may cause to issue in any competent court a writ of injunction enjoining any person from practicing medicine in any of its departments, until such person obtains a certificate under the provisions of this Part. This injunction shall not be subject to being released upon bond.

In the suit for an injunction, the board, through its president, may demand of the defendant a penalty of not more than one hundred dollars, and attorney's fees not to exceed fifty dollars, besides the costs of court. This judgment for penalty, attorney's fees, and costs may be rendered in the same judgment in which the injunction is made absolute.

The trial of the proceeding by injunction shall be summary and by the judge without a jury.

Sec. 1287. *Anesthetics, administering by midwives; penalty*

No person holding a certificate to practice midwifery shall administer any form of anesthetic to any person under their care unless done by the direction and under the supervision of a licensed physician.

Whoever violates this Section shall be fined not more than one thousand dollars, or imprisoned for not more than six months or both.

Sec. 1288. *Itinerant vendors of drugs; penalty*

No itinerant vendor shall profess to cure or treat disease or deformity by any drug, nostrum, manipulation, or other expedient which he may offer for sale or demonstration.

Whoever violates this Section shall be fined not less

than twenty dollars nor more than one hundred dollars for each offense, or imprisoned for not less than ten days nor more than thirty days or both.

Sec. 1289. *Penalties*

Whoever violates any of the provisions of this Part shall, for each offense be fined not less than fifty dollars nor more than one hundred dollars, or imprisoned for not less than ten days nor more than ninety days or both.

Sec. 1290. *Exemptions*

None of the provisions of this Part shall apply to:

(1) Any commissioned physician or surgeon of the United States Army, Navy, or Public Health Service, practicing in the discharge of his official duties; or

(2) Physicians or surgeons of other states or territories in actual consultation with a licensed physician of this state; or

(3) The giving of family remedies in cases of emergency; or

(4) Licensed dentists, pharmacists, osteopaths, practicing according to law; or

(5) Anyone attending in an emergency a woman in childbirth; or

(6) Repealed. Acts 1956, No. 380, Sec. 2.

(7) The practice of Christian Science or religious rules or ceremonies as a form of religious worship, devotion or healing, if the persons administering, making use of, assisting, or prescribing this practice rely on faith and prayer alone, do not prescribe or administer drugs or medicine, or perform surgical or physical operations, or assume the title of, or hold themselves out to be, physicians or surgeons. As amended Acts 1950, No. 423, Sec. 1.

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APPENDIX C

BY MR. SIMON:

Q. Your name, sir, is Doctor J. Morgan Lyons?

A. Yes.

Q. Where do you practice your profession, Doctor?

A. In New Orleans.

Q. And, how long have you been so practicing your profession?

A. Since 1941.

Q. Are you a practitioner of the science of allopathy?

A. I'm sorry, I don't hear you, sir?

Q. You are an allopath?

A. Yes.

Q. Would you define the term allopath, or the science of allopathy?

A. That's a phase of the treating art which proceeds to treat by way of induction of another comparable condition or a condition that will recede, cause recession of the pathology that exists.

Q. Basically, the employment of drugs in the management of these processes?

A. Use of drugs, surgery.

Q. Now, there are other schools of medicine, homeopathic schools, is that right?

A. Yes.

Q. Which is distinguished from the allopathic?

A. Yes.

Q. There is another school termed the osteopathic?

A. Yes.

Q. Which is likewise different from the homeopathic and the allopathic process?

A. Yes.

Q. And, there is a school of medicine called the chiropractic?

A. Yes.

Q. Which is different from all the three other schools of medicine, is that true, sir?

A. Yes.

* * * * *

Now, Doctor, I would make inquiry into the basic aspects of the practice of medicine. Now, we have gone through already and you have stated the basic medical thoughts. Now, as to this is there a fundamental difference between the homeopathic practice and the allopathy?

A. Yes, sir, the homeopathic concept is definitely on the wane. There are no homeopaths in the state of Louisiana. They were the individuals who adhered to the theory, first of all, it means, "I cure." There were individuals who adhered to the thought that the administration of rather minute medications would eventually bring about relief, cessation of symptoms.

Q. On the contrary, an allopath subscribes to antibodies?

A. Yes, antigens or the creation of antigens.

Q. Did not, homeopaths are engaged in the practice of medicine within the broad definition of the act?

A. Yes, they did. They had a board of examiners at the time they were existent in the state.

Q. What is the theory of osteopathy?

A. Osteopathy is that science and art instituted by a Still group. They believe that it is all a matter of abnormal blood in the ones tissue or body of viscera and that by certain manipulative processes, they use the bone, hence the name, they use the bone of the limb of the field of origin to manipulate or reduce this abnormal blood condition or to stimulate a better flow of blood to that area.

May I qualify that by saying that the present field of osteopathy is so far remote from this original theory that it is not hardly recognizable.

Q. Now, Doctor, would you agree with the following definition that the American Illustrated Medical Dictionary summarizes osteopathy as "A system of therapy in which diseases are treated by manipulating the bones and by other manual manipulations intended to restore the deranged mechanism of the body. The official definition of osteopathy adopted by the American Osteopathic Association is 'That system of the healing art which places the chief emphasis on the structural integrity of the body mechanism, as being the most important single factor to maintain the well-being of the organism in health and disease."

A. Yes, sir.

Q. Very well.

Now, they do not use drugs, do they?

A. Yes, sir, they do.

Q. Now, in the state of Louisiana; are you familiar with the definition of osteopathy under the Act?

A. Yes.

Q. It states that osteopathy means "The treatment—" I'm quoting from title 37 section 1111, "Osteopathy means

the treatment of disease, infirmity, defects, deformity, ailment, or injury of a human being, by manipulation applied to the nerve centers, bones, muscles or ligaments, without the use of drugs or medicines, except antiseptics and anodynes locally applied."

Are you familiar with that?

A. Yes, I am.

Q. And, to the contrary allopathic medicine includes the use of drugs?

A. Yes.

Q. Very well.

A. To that extent—

Q. In the state of Louisiana there is this fundamental difference between osteopathy and allopathy?

A. (nods in the affirmative).

Q. Now, to your knowledge, Doctor Lyons, does the osteopath hold themselves out as engaged in the practice of medicine within the definition—

A. Yes, sir.

Q. —of the medical practice act?

A. They do.

Q. And that is a notoriously known fact?

A. Not notorious, but I think it is a known fact.

Q. I didn't mean to imply anything detrimental.

So, that in theory and practice osteopathy is not allopathy?

A. That's right.

Q. In theory and practice chiropractic is not allopathy?

A. That's right.

Q. Now, Doctor Lyons, Section 1271 of Title 37 provides that before a person can practice medicine he has to pass an examination among which is "The Theory and Practice of Medicine." Now, I take it this is the theory and practice of allopathy?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

MR. PHELPS: I think the statute speaks for itself.

THE COURT: (JUDGE WRIGHT) I think the witness can answer and state how it is being applied by the board.

BY MR. SIMON:

Q. We've gone through the theory of allopathy already.

Now, Doctor, this particular section, Theory and Practice of Medicine does not mean the theory and practice of homeopathy, does it?

A. No, it does not.

Q. And, likewise, it does not mean the practice of osteopathy?

A. No, sir, it does not.

Q. Likewise, it does not mean the theory and practice of chiropractic, does it?

A. No, sir, it does not.

Q. Now, the use of the term surgery in that same section, which is subsection 4 & 5 of this same section, the surgery there contemplated relates to the surgerical procedure that is part of the homeotherapy or allopathic, is that right?

A. Yes.

Q. It doesn't refer to the osteopathic concept of Medicine?

A. No, sir.

Q. Neither osteopathic or chiropractic, is that right?

A. No, sir.

Q. Now, the term bacteriology—withdraw that question—the term Materia Medica relates to the use of drugs as used by the allopathic concept of medicine, is that right?

A. Yes.

Q. It does not mean that use as made by the homeopath?

A. No, sir, it does not.

Q. Now, obstetrics and gynecology, is that considered a specialty within the overall practice of the allopathic science of medicine?

A. Yes.

Q. So, obstetrics as obstetrics is not necessarily a therapeutic procedure, is it? It is just a specialty of the—

A. Certainly there are many features of obstetrics which require therapy, particularly—

Q. That is in reference to a pathological condition and in an area of practice? Correction—

A. Correction of a pathological condition, yes, sir.

Q. Gynecology is similar?

A. Yes.

Q. Relief to a pathological condition?

A. Of the female—

Q. And, of that area of practice in the allopathic science?

A. Yes.

Q. Now, Doctor Lyons, that portion of subsection five, namely surgery, theory and practice of medicine and materia medica, those relate to the therapeutic procedures of allopathic medicine?

A. As well as diagnostic features.

Q. Now, how is surgery related to diagnostic procedures?

A. Well, we first have to make diagnoses before we reach for the knife.

Q. Reaching for the knife and using the knife is that therapy designed to relieve pathology?

A. Yes, sir.

Q. So it is therapeutic in nature?

A. Yes.

Q. Not diagnostic?

A. No, sir.

Q. And, when you give drugs, again, that is therapy?

A. Yes, sir.

Q. Therapeutic in nature?

A. Yes, sir.

Q. Not diagnostic? Is that right?

A. That's right.

Q. And, similarly, when you apply the theory and practice of medicine you are engaging, or at least formulating a therapeutic thought along the lines of allopathic science, is that true?

A. Yes, sir.

Q. So, then, as with anatomy, physiology, chemistry, physical diagnosis, pathology and bacteriology and hygiene. Now, then, I take those are the subjects that are re-

quired, diagnostic procedures, that's for informational knowledge, not necessarily for diagnosis, is that right, sir?

A. Yes.

Q. That's right?

A. Yes.

Q. And, I take it that this as outlined in the statute is considered to be sufficient together with the use of diagnostic instruments in the diagnostic procedure?

A. There is a great deal of overlay in our fields of medicine, if I may explain that. For instance, one must have, we feel, information and knowledge of bacteriology. You must know something about pathology, you must know physical diagnosis in order to make the diagnosis of acute appendicitis, you know that the colon bacilli will do so forth and so on in a rupture to the bowel—

Q. I'm not asking you to justify it, Doctor Lyons. Maybe you misunderstood me. But, I am saying, this which is embodied in the statute is considered to be procedures necessary for diagnostic analysis of human ailments?

A. Yes, sir.

Q. Very well.

Now, a person certificated in these in the judgment of the board would be competent to diagnose human ailments?

A. Yes.

Q. In all their amplifications? Is that correct, Doctor?

A. Yes.

DEPOSITION OF DR. RHETT MCMAHON, taken September 28, 1959:

Page 24, Line 17

Q. And, if a licensee, with a license from your Board, should see fit to administer chiropractic treatment, he would be at liberty to do so?

A. If he had a certificate to practice medicine, yes.
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* * * * *

Q. Well, we will let it go, Doctor; thank you. Then, after a person has been licensed to practice, I believe we have agreed that he may perform such treatment and practice in anyway that he feels and that seems to him proper in connection with the needs of the patient without supervision by the Board, is that correct?

A. Well, not in anyway. He might want to do a criminal abortion.

Q. I certainly didn't mean an illegal manner.

A. You said anyway.

Q. But, he may practice his profession in such manner as seems fit and proper to him, within lawful limitations?

A. That's right. In other words, you want me to say that he can practice any sector of the healing art.

Q. Exactly.

A. Yes.

Q. When you see that phrase, any sector of the healing art, can you tell us what you mean by that kind of language? What do you mean?

A. I mean if he had a certificate to practice medicine in the State of Louisiana, he could practice chiropractic which is a sector of the healing art.

LOUISIANA REVISED STATUTES, TITLE 37

SECTIONS 751-790

DENTISTS

Section 751. Definitions

As used in this Chapter, "board" refers to the Louisiana State Board of Dentistry.

Dentistry means that practice in which a person:

(1) Represents himself as being able to diagnose, treat, remove stains and concretions from the teeth, operate, or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, alveolar process, gums, or jaws or associated parts and offers or undertakes by any means to diagnose, treat, remove stains or concretions from teeth, operate, or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the same, or to take impressions of the teeth or jaws;

(2) Maintains or operates an office for the practice of dentistry; or

(3) Engages in any of the practices included in the curricula of recognized and approved dental schools or colleges; or

(4) Uses a dental degree, designation, card, device, directory, poster, signs or other media whereby he represent himself to be a dentist or as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of the human teeth, alveolar process, gums, or jaws or associated parts;

(5) Is a manager, proprietor, operator, or conductor of a place where dental operations are performed; or

(6) Performs dental operations of any kind gratuitously, or for a fee, gift, compensation, or reward, paid or to be paid, either to himself or to another person; or

(7) Uses a Roentgen or X-Ray machine for dental treatment, roentgenograms, or dental diagnostic purposes; or

(8) Extracts human teeth, or corrects or attempts to correct malpositions of the human teeth or jaws; or

(9) Offers and undertakes by any means to diagnose, treat, or remove stains or concretions (accretions) from human teeth or jaws; or

10) Uses or administers local or general anesthetics in the treatment of dental or oral diseases or in any preparation incident to a dental operation of any kind or character; or

(11) Takes impression of the human teeth or jaws or performs any phase of any operation incident to the replacement of a tooth or part of a tooth or associated tissues by means of a filling, crown, bridge, denture, or other appliance; or

(12) Furnishes, supplies, constructs, reproduces, or repairs or offers to furnish, supply, construct, reproduce, or repair prosthetic dentures (sometimes known as "plates"), bridges, or other substitute for natural teeth to the user or prospective user.

(13) Furnishes, supplies, constructs, reproduces, replaces or repairs a prosthetic appliance or denture (sometimes known as a plate), bridge or other substitute for natural teeth without having received a written authorization or prescription furnished by a licensed and registered dentist upon a form approved by the Louisiana State Board of Dentistry, as hereinafter set forth or fails to

retain copies of said work orders or prescriptions so furnished for a period of two calendar years in addition to the current year.

Where it is difficult to determine under this Section whether the treatment and attention more properly belongs to the field of dentistry, the dentist shall call in a member of the medical profession to cooperate with him.

The fact that any person engages in or performs, or offers to engage in or perform, any of the practices, acts, or operations, set forth in this Section, is prima facie evidence that such person is engaged in the practice of dentistry.

A "reputable dental school" means one that is recognized as such by the Counsel of Dental Education of the American Dental Association. As amended Acts 1962, No. 17, Sections 1, 2.

Section 752. Exemptions.

The provisions of this Chapter shall not apply to:

(1) The rendering of dental relief in emergency cases by a physician or surgeon in the practice of his profession if he is licensed and registered as such under the laws of this state and if he does not reproduce or undertake to reproduce lost parts of the human teeth in the mouth or to restore or replace lost or missing teeth in the mouth; or

(2) The practice of dentistry by dentists in the armed services of the United States, the United States Public Health Service, or the United States Veterans Bureau in the discharge of their official duties; or

(3) Dental schools or colleges approved by the Department of Education; the practice of dentistry by stu-

dents in dental schools or colleges approved by such department when acting under the direction and supervision of registered dentists, licensed and acting as an instructor or professor; interns in any hospital or institution, but not residents. However, all dentists registered as instructors or professors shall obtain from the board a license restricting their practice to that of a teacher and application for said restricted license shall be accompanied by a certification of employment by the dean of said dental school who shall be responsible for notifying the board immediately upon termination of employment of said instructor or professor.

(4) The practice of dentistry by licensed dentists of other states or countries at meetings of the Louisiana State Dental Society or its component part, alumni meetings of dental colleges, or any other like dental organizations, while appearing as clinicians; or

(5) The use of Roentgen or other rays for making roentgenograms, radiograms, or similar records of dental prescriptions furnished by a licensed and registered dentist on a form approved by the Louisiana State Board of Dentist, and if this service is not offered to the public by any name as an aid or inducement to secure dental patronage. No person shall announce to the public that it has, leases, owns, or operates a Roentgen or X-Ray machine for the purpose of making dental roentgenograms of the human teeth or tissues of the oral cavity, or administering treatment for any disease thereof; or

(6) The making of artificial restorations, substitutes, appliances, or materials for the correction of diseases, loss, deformity, malposition, dislocation, fracture, injury of the jaws, teeth, lips, gums, cheeks, palate, or associated tissues or parts, upon written work orders or

prescriptions furnished by a licensed and registered on a form approved by the Louisiana State Board of Dentistry as hereinafter set forth, and the use in connection with said work order or prescription of casts, models or from impressions furnished by a licensed or registered dentist; or

(7) The making and repairing of prosthetic dentures, bridges, artificial restorations or other structures to be used or worn as substitutes for natural teeth, or appliances for the correction of disease, loss, deformity, malposition, dislocation, fracture of or injury to the jaws, teeth, lips, gums, cheeks, palate, or associated tissues or parts upon a written work order or prescription furnished by a licensed and registered dentist on a form approved by the Louisiana State Board of Dentistry as hereinafter set forth and constructed on, or by use of, casts or models made from impressions taken by a licensed and registered dentist if these prosthetic or orthodentic appliances, or the services rendered in the construction, repair, or alteration thereof are not offered for sale, or use, or delivery to the public or placed or adjusted in the oral cavity, except by licensed and registered dentists. As amended Acts 1962, No. 17, Section 3; Acts 1964, No. 133, Section 1.

Section 753. Louisiana State Board of Dentistry; members; term of office

There is created the Louisiana State Board of Dentistry which shall carry out the purposes and enforce the provisions of this Chapter.

The board shall consist of the seven qualified and licensed dentists, chosen by the Governor and presently constituting said board, however, vacancies on the board occurring in or after the calendar year 1964, shall be filled as follows: The licensed dentists of each congressional

district at a meeting duly called at least thirty days prior to a vacancy occurring by reason of an expiring term, or within thirty days of a vacancy occurring by reason of death or resignation, shall nominate from their roster three members for appointment to the board and the names of said nominees shall be certified to the Governor. For the purpose of said nominations the First and Second Congressional Districts shall count as one district. The Governor shall appoint one member to the board from each district from the names submitted. The secretary of the board shall be charged with the duty of fixing the time and place of the nominating meeting in each district as herein required and shall notify each licensed dentist in said nominating district by U. S. mail at the last known address as indicated in the Board files, at least ten days prior to said nominating meetings and shall certify the results to the Governor. All appointments made under the provisions of this section shall be for a period of five years.

No member of the faculty or teaching staff of any university or college having a dental department in this state, nor a dentist owning stock or operating a dental supply business or commercial laboratory shall be appointed to the board. As amended Acts 1952, No. 314, Section 1; Acts 1964, No. 133, Section 2.

Section 754. Organization of the board; seal; records; meetings

The board at its annual meeting shall elect from its members a president and a vice president. It shall also appoint a secretary-treasurer who may be but need not be a member of the board.

The board shall have an official seal and shall keep

proper minutes and records of all its proceedings, which shall be open at all reasonable times to public inspection. The board shall make a complete record of the names and addresses and license numbers of persons licensed as dentists and dental hygienists, and of all licenses revoked by it. A transcript of the minutes and record entries, certified by the secretary-treasurer under the seal of the board, shall be evidence of the facts therein stated. The secretary-treasurer shall be the legal custodian of all property, money, minutes, records, proceedings, and seal of the board.

The board shall hold one regular meeting each year and special meetings as are necessary. The board shall determine the place within the state and the time of all meetings. As amended Acts 1952, No. 314, Section 1; Acts 1958, No. 490, Section 1; Acts 1964, No. 133, Section 3.

Section 755. Compensation of members

Out of the funds of the board, the members shall receive fifty dollars per day and necessary traveling expenses for each day actually engaged in the duties of their offices. In addition the secretary-treasurer shall be paid a salary of four hundred dollars per month in connection with the duties of his office, whether he is a member of the board or is otherwise appointed by the board. As amended Acts 1958, No. 490, Section 1; Acts 1962, No. 17, Section 4.

Section 756. Receipts and disbursements of board

All fees received by the board under this Chapter shall be paid to the secretary-treasurer. Disbursements made by the board shall be signed by the president and the secretary-treasurer. No expenses shall be incurred by the board in excess of the revenue derived from such fees.

The board may expend the necessary funds for its offices, furniture, fixtures, and supplies.

Section 757. Bond of president and secretary-treasurer

The president and the secretary-treasurer of the board shall give a bond in the amount of two thousand dollars each and in the form approved by the governor for the faithful discharge of their official duties. The premiums on the bond shall be paid by the board.

Section 758. Affiliation with National Association of Dental Examiners

The board may affiliate with the National Association of Dental Examiners, as an active member, and pay regular annual dues to this association and send one member of the board as a delegate to the meetings of such association. The delegate may receive the per diem provided in R.S. 37:755 for the time spent in attending such meetings and reimbursement for actual and necessary traveling expenses.

Section 759. Report of board

The board shall report its proceedings and the items of its receipts and disbursements for the previous calendar year to the Governor before July first in each year. As amended Acts 1964, No. 133, Section 4.

Section 760. Powers and duties of the board

The board shall exercise, subject to the provisions of this Chapter, the following powers and duties:

(1) Conduct examinations to ascertain qualifications and fitness of applicants for licenses as dentists and dental hygienists.

(2) Pass upon the qualifications of applicants for reciprocal licenses.

(3) Prescribe rules and regulations for examination of candidates.

(4) Conduct hearings on proceedings to revoke or suspend, and to revoke or suspend a license granted under this Chapter, when evidence has been presented showing violation of any of the provisions of this Chapter.

(5) Conduct proceedings relative to the refusal of reissuance of licenses, certificates, or authorities, when evidence has been presented showing violation of any of the provisions of this Chapter.

(6) Issue licenses, certificates, or authorities in conformity with this Chapter to applicants who have been found qualified.

(7) Shall investigate complaints of illegal practice when evidence is presented to the board.

(8) Grant an examination to any student of dentistry and dental hygiene, upon his application for such an examination, after he has finished the first two years of study prescribed for such students, in the basic science subjects of dentistry and dental hygiene, namely, general anatomy, micro-anatomy, dental histology, biochemistry, bacteriology, physiology and general pathology, and if a passing grade is made in the said branches in such an examination, the student shall be relieved from further examination in the same branches at a later date when application is made for a final examination and license to practice dentistry or dental hygiene; provided such examination shall be granted upon the student paying to the state board of dentistry, at the time of applying for such an examination, the sum of ten dollars. As amended Acts 1950, No. 492.

Section 761. Requirements of applicants for dental license

The board shall require that every applicant for a dental license shall:

(1) Be a citizen of the United States.

(2) Present satisfactory evidence of graduation from a dental college or university approved by the Counsel of Dental Education of the American Dental Association.

(3) Present satisfactory evidence of graduation from a recognized dental college where the individual has completed his course prior to the institution of predental courses, and was licensed and practiced dentistry in another state or territory of the United States for at least five years.

(4) Submit for the files of the board a recent picture duly identified and attested.

(5) Pass an examination given by the board in the theory and practice of the science of dentistry. The board may, however, recognize a certificate granted by the National Board of Dental Examiners in lieu of, or subject to, the required examination.

Section 762. Licenses; data on

All licenses and certificates issued by the board shall bear a serial number, the full name of the licensee, the date of issuance, the seal of the board, and be signed by the president of the board and attested by its secretary.

Section 763. Registry of license; failure to register

Within thirty days after the issuance of a certificate obtained under this Chapter, every dentist and every dental hygienist in the state who resides in the Parish of Orleans shall register his license with the clerk of the district court in the parish in which he resides or practices.

Failure to register shall subject any licensee to suspension or revocation in accordance with the provisions of this Chapter.

The clerk of court or secretary of the State Board of Health may charge a fee of one dollar for every registration of a license. All clerks of court shall forward the names and addresses of persons registered as dentist or dental hygienist to the State Board of Health.

The secretary of the State Board of Health and the clerks of court in the parishes of this state shall send by mail or otherwise to the secretary of the board, annually, a certified list with the full name, address, and number of every dental license and dental hygienist license recorded in his respective office, under penalty provided for the violation of the provisions of this Chapter.

Section 764. Dental Hygienists; application for license

Every applicant to be licensed as a dental hygienist shall:

(1) Be of good moral character;

(2) Be not less than eighteen years of age;

(3) File with the board a written application upon the form prescribed by the board, verified by oaths, and accompanied by the required fee and a recent unmounted autographed photograph of the applicant; and

(4) Furnish satisfactory proof that he is a graduate of a training school for dental hygienists affiliated with a reputable dental school and requiring a course of not less than one academic year.

Section 765. Examination of dental hygienist; issuance of license

The applicant for a license as a dental hygienist shall

appear before the board at its first examination after the filing of his application and pass a satisfactory examination consisting of practical demonstration in oral prophylaxis and written or oral test on subjects prescribed in the curricula of recognized dental schools. If the applicant passes the examination he shall receive a license from the board, attested by its seal, and signed by its president and secretary-treasurer. After registration provided in R.S. 37:763, the license shall be evidence of his right to practice as a dental hygienist in this state under the provisions and regulations provided for in this Chapter.

Section 766. Hygienists, employment; operations limited

Any licensed dentist of good standing, public institution or school authority, may employ a licensed hygienist who may remove calcic deposits, accretions and stains from the surface of the teeth but shall not perform any other operation on the teeth or tissues of the mouth, except the operation of a Roentgen or X-Ray machine under the direct or general supervision of a physician or dentist as defined in R.S. 37:752(5), as amended. A registered dental hygienist may operate only under the general direction or supervision of a licensed dentist in a dentist's office or in any public school or other institution. As amended Acts 1962, No. 17, Section 5.

Section 767. Duplicate certificates; issuance

If the loss of a dental license or dental hygiene license is satisfactorily shown, a duplicate shall be issued by the board upon payment of the fee required in R.S. 37:769.

Section 768. Reciprocal agreements; licensing under

The board may issue a license, without examination, to an applicant:

(1) Who is a citizen of the United States;

(2) Who furnishes satisfactory proof that he is a graduate from a reputable dental school or college of a state, territory or district of the United States;

(3) Who holds a license from a similar dental board under requirements equal to those of this state;

(4) Who for five consecutive years immediately prior to filing his application has legally and reputably practiced dentistry in a state, territory or district of the United States.

No license shall be issued under this Section unless the state, territory, or district from which the applicant comes, shall accord equal rights to a dentist of Louisiana holding a license from the board.

All licenses issued under this Section shall be authorized by an affirmative vote of all the members of the board present at such meeting.

Section 769. Fees

The board shall collect in advance the following fees:

(1)	Examination fee for dental applicants	$50.00
(2)	Reciprocity fee	50.00
(3)	Duplicate license fee	5.00
(4)	Fee for licensing dental hygienist	35.00
(5)	Renewal license fee for dentist	10.00
(6)	Renewal fee for dental hygienist	5.00
(7)	Delinquency fee for dentist in addition to renewal fee	10.00
(8)	Delinquency fee for dental hygienist in addition to renewal fee	5.00

Provided, that in all cases where students have previously paid the charge of ten dollars when standing an examination in the said basic science studies, as hereinbefore provided, the final fee for license practice dentistry shall be forty dollars, thus allowing him credit for the ten dollars previously paid for his examination in the said basic science subjects. As amended Acts 1950, No. 492; Acts 1958, No. 490, Section 1.

Section 770. Renewals

The secretary-treasurer of the board shall collect the annual renewal license fee for dentists and dental hygienists. Failure to pay this fee before the first of March of each year will automatically suspend the license of the dentist or dental hygienist. Any dentist or dental hygienist engaging in the practice of dentistry of dental hygiene after failure to pay in any year, shall be considered as illegally practicing and subject to prosecution, injunction, and revocation of license as provided in this Chapter.

Payments of the renewal license fee made after the first of March in any year shall be accompanied with the delinquency fee.

Section 771. Right to use title

A dental licensee of this state, graduated from a reputable dental school has the right to use the title "Doctor" or its abbreviation before his name or append to his name the letters: "B.D.S.", "M.D.S.", "L.D.S.", "D.D.S.", "D.M.D." or equivalent letters signifying the dental degree conferred upon him.

Section 772. Anesthetics and prescriptions

A licensed dentist may administer general and local anesthetics and prescribe drugs or medicines necessary or proper in the practice of his profession.

Licensed druggists of this state may fill prescriptions of licensed dentists of this state for any drug necessary to the practice of dentistry.

Section 773. State and municipal regulations

All persons licensed to practice dentistry in this state shall observe and be subject to all state and municipal regulations relating to the control of contagious and infectious diseases and any and all matters pertaining to public health.

They shall make reports to proper health offices the same as those practicing other professions are required to so report and executing death certificates, when necessary in the practice of their profession. These reports and certificates, in the manner provided by law, shall be accepted by the office or department to whom they are made.

Section 774. Practice under name of licensee

No person shall:

(1) Practice dentistry under the name of a corporation, company, association, or trade name, or under any name except his own proper name, which shall be the name used in his license as issued by the board;

(2) Conduct, maintain, operate, own or provide a dental office in this state, either directly or indirectly, under the name of a corporation, company, association, or trade name;

(3) Hold himself out to the public, directly or indirectly, as soliciting patronage or as being qualified to practice dentistry in this state under the name of a corporation, company, association, or trade name;

(4) Operate, manage, or be employed in any room or office where dental service is rendered or contracted

for under the name of a corporation, company, association, or trade name.

Section 775. Unprofessional conduct defined

As used in this Chapter, "unprofessional conduct" means:

(1) The publication or circulation, directly or indirectly, of any fraudulent, false, or misleading statements as to the skill or method of practice of any person; or

(2) The advertising of the performance of any dental operation without causing pain; or

(3) The advertising in any manner which tends to deceive or defraud the public; or

(4) The claiming of professional superiority over neighboring practitioners; or

(5) The publishing of reports of cases or testimonials of patients in any public advertising media; or

(6) The use of advertising in which reference is made to any anesthetic, drug, formula, material, medicine, method, or system used or to be used; or

(7) The advertising of any free dental services or examinations as an inducement to secure dental patronage; or

(8) The advertising of price, cost, charge, fee, or terms of credit for the services performed or to be performed, or for material used or to be used, by any person engaged as principal or agent in the practice of dentistry; or

(9) The employment of a solicitor or "capper" or "steerers" to obtain patronage; or

(10) The advertising of artificial teeth or dentures

by the use of any representation of a tooth, teeth, bridgework or denture, or of any portion of the human head; or

(11) The exhibition or use of specimens of dental work, posters, or any other media calling attention of the public to any persons engaged in the practice of dentistry; or

(12) The giving of a public demonstration of skill or method of practicing dentistry upon or along the streets or highways or any place other than the office where the licensee is known to be regularly engaged in the practice of dentistry; or

(13) The advertising of a guarantee for any dental service; or

(14) The use of all advertising; but a dentist may insert a professional card in the local press, in programs or yearbooks, if this card is not greater in size than three and one half inches by two inches, and a dentist may insert information in public print when not more than one column in width and two inches in depth, which must not include more than dentist's name, title, degree, office location, office telephone number, office hours, residence address and residence telephone number; or

(15) The use of display signs of a larger area than four hundred square inches or containing letters more than five inches in height; or

(16) The use of any electric sign.

(17) The use of the name of any deceased licensed dentist or hygienist on an office door, directory, or on any stationery or bill head at any time one year after the death of the deceased licensee, regardless of the fact that said office may have been owned or leased by the deceased licensee.

(18) The employment or engaging of the services of any person, firm, or corporation to construct, repair, furnish, supply or reproduce a prosthetic appliance or denture (sometimes known as a plate), bridge or other substitute for natural teeth without furnishing a written work order on a form approved by the Louisiana State Board of Dentistry which shall contain: (1) name and address of person, firm or corporation to which work order is directed. (2) patient's name or identification number, and if number is used, patient's name must be written upon duplicate copy retained by dentist. (3) date on which work order was written. (4) description of work to be done, including diagrams if necessary. (5) specification of type and quality of materials to be used. (6) signature of dentist and number of his license; or, the failure to retain the original copy of the work orders so furnished for a period of two calendar years in addition to the current year. As amended Acts 1962, No. 17, Section 6.

Section 776. Causes for suspension or revocation of dental license

The board may refuse to issue, suspend, or revoke a license for the practice of dentistry if it finds that the licensee is afflicted with a contagious or infectious disease, or if it finds that the licensee has been convicted of practicing dentistry under a corporate, trade, or firm name in violation of the provisions of this Chapter, or has been convicted of a felony, or of a crime involving moral turpitude; or if it finds that the licensee has committed any of the following acts:

(1) Fraud in connection with the securing of the license;

(2) Habitual indulgence in the use of narcotics or intoxicating liquors;

(3) Wilful or repeated violations of the rules of the department of health;

(4) Wilful and gross malpractice or wilful gross neglect in the practice of dentistry;

(5) Acceptance of a fee for service as a witness, without the knowledge of the court, in addition to the fee allowed by the court;

(6) Division of fees or agreement to spiit or divide the fees received for dental services with any person for bringing or referring a patient, without the knowledge of the patient or his legal representative; however, this paragraph shall not forbid licensed dentists from practicing in a partnership and sharing professional fees or forbid a licensed dentist from employing another licensed dentist;

(7) Employing, procuring, inducing, aiding, or abetting a person not licensed or registered as a dentist to engage in the practice of dentistry; but the person practiced upon shall not be an accomplice, employer, procurer, inducer, aider, or abetter within the meaning of this provision;

(8) Employing unlicensed persons to perform work which under this Chapter can only be done by persons licensed to practice dental hygiene in this state;

(9) Making any misrepresentations or false promises, directly or indirectly, to influence, persuade, or induce dental patronage;

(10) Professional connection or association with, or lending his name to, another for the illegal practice of dentistry by another, or professional connection or association with any person holding himself out in any manner contrary to this Chapter;

(11) Practicing under any name other than that which appears on the license;

(12) Unprofessional conduct as defined in R.S. 37: 775;

(13) Any conduct intended to deceive or defraud the public;

(14) Conduct which being contrary to the provisions of this Chapter, disqualifies him to practice dentistry with safety to the public.

Section 77. Causes for suspension or revocation of license of dental hygienist

The board may suspend or revoke the license of any dental hygienist if it finds that the licensee has been convicted of a crime involving moral turpitude, or has committed any of the following acts:

(1) Deceit, fraud, or wilful misrepresentation in securing a license;

(2) Habitual use of drugs or intoxicants to an extent rendering him unfit for the practice of his occupation; or

(3) Performance of any operation other than that permitted under the provisions of this Chapter.

Section 778. Board to hear charges against dentists and dental hygienists.

The board shall hear and determine all charges against any licensed dentist or licensed dental hygienist for violation of any of the provisions of this Chapter. It may in all cases suspend or revoke the license and reinstate any license if suspended or revoked.

Section 779. Filing of charge; appointment of committee to hear charge

All charges against a dentist or a dental hygienist under R.S. 37:776 or 37:777 for violation of this Chapter shall be made under oath either by the secretary-treasurer, a duly authorized inspector, a member of the board, or any citizen, and submitted to the president of the board, who, unless for good and sufficient cause shown by his written reasons, shall appoint a committee of three or more members of the board besides himself to hear the charge. A member of the board making the charge shall be ineligible to sit as a member of the committee. The president shall designate the time and place of the hearing.

Where the charge is made by a citizen, he should state the sources of his information and the grounds of his belief, and the secretary, a member, an inspector, or an agent of the board shall substantiate the charge by determining that the citizen is informed and believes that the charge is true.

Section 780. Hearing; notice

In all cases where a charge is made against any licensed dentist or licensed hygienist practicing in this state, the secretary of the board, before any hearing of the charge, shall furnish the accused with a copy of the charges and a notice of the time and place of the hearing. The secretary shall also notify the accused to attend the hearing and inform him that he may appear with counsel, that he may produce witnesses and give competent evidence under oath, and that he has the right to cross-examine witnesses appearing against him, and giving testimony under oath. Service of this notice shall be personal or by leaving it at the place of business or residence of the accused, at least twenty days before the time fixed for the hearing or before

the time and place to which adjourned.

The committee hearing the charge shall cause the testimony adduced to be reduced to writing or stenographic record. Should the committee after due hearing find that the charges filed against the accused are sustained by the evidence, it may revoke or suspend his license. This suspension or revocation shall take from the accused, all rights and privileges acquired under the license issued to him.

Section 781. Issuance of subpoenas

The president or any member of the board may issue subpoenas requiring the attendance and testimony of witness and the production of any evidence that relates to any matter properly under investigation or in question before the board or committee, conducting the hearing or investigation.

In case of refusal to obey a subpoena issued to any person, the board may apply to any district court within the jurisdiction, where the inquiry is carried on or within the jurisdiction where such person is found, resides, or transacts business, to issue to such person an order requiring him to appear before the board, its member, agent, or agency, to produce evidence if ordered or to give testimony touching the matter under investigation or in question. Any failure to obey this order of the court may be punished by the court as a contempt.

The board may require the attendance of witnesses who are summoned in all matters arising in the course of its duties, and at an investigation, the board shall take any oral or written proof, for or against the person whose license is sought to be suspended or revoked, that will best present the facts.

Section 782. Employment of attorney

In special cases the board may employ an attorney if deemed necessary.

Section 783. Reinstatement or reissuance of license

A. The board may, if the action is warranted, reinstate the license of a dentist or dental hygienist if suspended, or issue a new license if revoked.

B. In case of reinstatement the reinstated dentist or dental hygienist shall pay all costs of the board proceedings, including stenographer's and attorney's fees, if one was employed at the hearing, and also a reinstatement fine not to exceed the sum of five hundred dollars. In case of revocation, the dentist or dental hygienist may be relicensed without any examination upon the proper application. As amended Acts 1962, No. 17, Section 7.

Section 784. Persons whose license suspended or revoked prohibited from practicing

Any dentist or dental hygienist whose license is suspended or revoked in accordance with this Chapter shall be deemed an unlicensed person during the period of the suspension or revocation, and shall be subject to the penalties prescribed for unlicensed persons if he practices during the period of suspension or revocation.

Section 785. Criminal actions and injunctions simultaneous with proceedings before board

Proceedings under this Chapter before the board are not exclusive remedies. Criminal action under the terms of this Chapter may be simultaneously instituted and maintained against the accused for any violation of this Chapter. The board may also simultaneously bring and carry on an action by injunction to restrain the accused from further violation of any of the provisions of this Chapter

during the pendency of the proceedings before the board and against any unlawful practice thereafter.

Section 786. Appeal from board's decision

If the board in any case arbitrarily or illegally abuse its discretion in suspending or revoking a license issued under the provisions of this Chapter, the party complaining may resort to the courts for the protection of his rights and on proper showing a decision of board may be set aside.

Section 787. Duty of attorney general

The attorney general shall see that all violations of the provisions of this Chapter are vigorously and promptly prosecuted by the various district attorneys throughout the state.

Section 788. Violations

No person shall practice or offer to practice dentistry or dental hygiene in this state without being registered or without a license for that purpose, or violate any of the provisions of this Chapter.

Section 789. Penalty

Whoever violates the provisions of this Chapter shall be fined, for the first offense, not less than two hundred dollars nor more than five hundred dollars, or imprisoned for not more than six (6) months, or both, and, for each subsequent offense fined not less than five hundred dollars nor more than one thousand dollars, and imprisoned for not less than six months nor more than one year. As amended Acts 1962, No. 17, Section 8.

Section 790. Forgery; penalty

No person shall file or attempt to file, as his own, the

diploma or license of another, or a forged affidavit of identification or qualification.

Whoever violates this Section shall be fined not more than five thousand dollars, or imprisoned with or without hard labor for not more than ten years, or both.

LOUISIANA REVISED STATUTES TITLE 37, SECTIONS 911-979

NURSES

Section 911. Definitions

When used in this Part the following terms shall have the meaning ascribed to them in this Section, unless the context clearly indicates otherwise:

(1) "Accredited School" means a school of nursing approved by the board;

(2) "Board" means the Louisiana State Board of Nurse Examiners;

(3) "Nursing" means that practice by a person who for compensation or personal profit

(a) performs any professional service requiring the application of principles of nursing based on biological, physical, and social sciences, such as responsible supervision of a patient requiring skill in observation of symptoms and reactions and the accurate recording of the facts and carrying out of treatments and medications as prescribed by a licensed physician, and the application of nursing procedures that involve understanding of cause and effect in order to safeguard life and health of a patient and others; or

(b) performs duties that are required in the physical

care of a patient and in carrying out of medical orders as prescribed by a licensed physician, requiring an understanding of nursing but not requiring the professional service as outlined in (a) of this paragraph;

(4) "Registered nurse" means a person who practices nursing, has completed the prescribed course for graduate nurses in an accredited school for registered nurses, and is licensed to practice nursing under the provision, of this Part;

(5) "Student nurse" means a person who is matriculated with an accredited school of nursing for the purpose of taking the prescribed course in nursing.

Section 912. Louisiana State Board of Nurse Examiners

The Louisiana State Board of Nurse Examiners is created. The board shall consist of five members, three of whom shall be registered nurses, and the other two licensed physicians.

Section 913. Requirements of members

Each member of the board shall:

(1) Be a citizen of the United States;

(2) Be a resident of Louisiana;

(3) Be duly licensed to practice their respective professions in Louisiana;

(4) Have had at least five years experience in the practice of their profession in Louisiana, and

(5) Have been engaged in active practice within two years prior to their appointment.

The registered nurse members of the board shall have completed at least an approved four year high school course of study and had not less than two years executive or teach-

ing experience in nursing education.

Section 914. Appointment of members; vacancies

The governor shall appoint the members of the board for a term of five years. Each appointment shall be made from a list of two names submitted to the governor by the Louisiana State Nurses' Association. The governor shall make the appointment within thirty days after the submission to him of the list of names.

All vacancies on the board shall be filled in the same manner provided for appointments.

Section 915. Removal of members

Any member may be removed from the board by the governor after hearing by the board wherein the charges for removal have been established and the removal is recommended by the Louisiana State Nurses' Association.

Section 916. Domicile of the board

The domicile of the board is Baton Rouge, Louisiana, but offices for the administration of the provisions of this Part may be established by the board in any of the principal cities in Louisiana.

Section 917. Compensation of members

Every member of the board shall in addition to necessary traveling and hotel expenses receive ten dollars per day for each day actually engaged in the discharge of the duties of the board.

Section 918. Meetings of the board; election of officers; quorum

The board shall meet annually at a time and place fixed by the board and shall elect at the annual meeting from its members a president and a secretary-treasurer. It

shall hold other necessary meetings during the year to transact its business.

A majority of the board including a board officer shall constitute a quorum at any meeting.

Section 919. Powers and duties of the board

A. The board shall:

(1) Prescribe curricula and standards for schools and courses preparing persons for license under this Part;

(2) Provide for a survey of these schools and courses at times as may be necessary;

(3) Accredit schools and courses that meet the requirements of this Part and of the board;

(4) Evaluate and approve courses for affiliation and post graduate courses;

(5) Examine, license, and renew the license of duly qualified applicants;

(6)) Conduct hearings upon charges calling for discipline of a licensee or revocation of a license;

(7) Cause the prosecution of all persons violating this Part, and have power to incur necessary expenses therefor; and

(8) Keep a record of all its proceedings.

B. The board may:

(1) Adopt and revise rules and regulations necessary to enable it to carry into effect the provisions of this Part;

(2) Appoint an attorney at law to represent it in all matters pertaining to the administration of this Part and fix his compensation and define his duties; and

(3) Employ persons necessary to carry on the work of the board and fix their compensation

Section 920. License required; use of title "registered nurses"

No person shall practice nursing without having been issued a license by the board. Only registered nurses shall use the term "registered nurse" or the letters "R.N." in connection with their name.

Section 921. Requirements for license

Applicants for a license as a registered nurse shall:

(1) Be a citizen of the United States or declared intention to be a citizen;

(2) Be of good moral character;

(3) Have completed the required course for study for registered nurses in an accredited school of nursing;

(4) Pass the prescribed examination given by the board for applicants which examination shall be written but may be supplemented by an oral or practicable examination in subjects that the board determines;

(5) Have committed no act, which if committed by licensee would be cause for discipline or action by the board;

(6) Have paid all fees required by this Part;

(7) Have completed a four year approved high school course of study or the equivalent thereof as determined by the board and other preliminary requirements the board requires; and

(8) Have completed the prescribed course of study in an accredited school of nursing or have graduated from a school of nursing in another state or country and also

fulfill the qualifications or the equivalent thereof for registered nurses in Louisiana.

Section 922. License to out-of-state registered nurses

The board may issue a license to practice nursing as a registered nurse without examination to an applicant who has been duly licensed or registered under the laws of another state or country if the applicant meets the qualifications or the equivalent thereof required of registered nurses by the provision of this Part.

Section 923. Applications for examination

Every applicant for examination and license shall, before the date set for examination by the board, file with the board an application on the form furnished by the board setting forth the information required. Satisfactory proof that the applicant meets the qualifications set forth in R.S. 37:921 and the license fee prescribed in R.S. 37:929 shall accompany the application.

Section 924. Renewal of licenses

Every person licensed under the provisions of this Part shall annually renew the license on or before January 31 of each year. Upon the receipt of the application for renewal and the renewal fee the board shall verify the accuracy of the application for renewal and issue to the applicant a certificate of renewal for the current calendar year.

Section 925. Reinstatement of license not renewed

A licensee who allows his license to lapse by failing to renew the license as provided by R.S. 37:924 may be reinstated upon satisfactory explanation for the failure to renew the payment of both the renewal fee for the current year and the reinstatement fee which fees are provided in R.S. 37:929.

Section 926. Temporary retirement from practice

A person licensed under the provisions of this Part who desires to retire from practice temporarily shall send a written notice by registered mail to the board. Upon receipt of this notice the board shall place the name of the licensee upon a non-practicing list. While remaining on the list the licensee shall not pay any renewal fees and shall not practice nursing in the state.

When the licensee desires to resume practice, an application for renewal of his license and payment of the renewal fee for the current year shall be made to the board.

Section 927. Schools of nursing; requirements; approval

Any school of nursing in this state that desires to become an accredited school of nursing for registered nurses shall apply to the board and submit evidence that it is prepared to:

(1) Give a course of theoretical instruction and practical experience in nursing as prescribed in the curriculum adopted by the board for schools for registered nurses, and

(2) Meet other standards and requirements established by this Part and by the board.

The secretary-treasurer of the board or a registered nurse duly authorized shall inspect the school making application. The result and findings of this inspection shall be submitted in a written report to the board, and if the requirements for an accredited school of nursing are met, the board shall approve the school as an accredited school of nursing.

Section 928. Schools of nursing; periodic inspections

The secretary-treasurer of the board or any registered nurse duly authorized by the board shall inspect from time

to time all schools of nursing in this state. If the board determines that any accredited school of nursing is not maintaining the standards required, notice in writing, specifying the defect shall be immediately given to the school. A school which fails to correct these conditions to the satisfaction of the board within a reasonable time shall be removed from the list of accredited schools of nursing.

The school inspected shall pay an annual fee provided in R.S. 37:929 to cover the cost of survey.

Section 929. Fees

The board may collect the following fees:

(1)	License fee as a registered nurse	$15.00
(2)	Fee for the evaluation of credits of applicants for admission to accredited school of nursing or to the re-entry into a school of nursing	1.00
(3)	Annual renewal license fee	1.50
(4)	Reinstatement fee	5.00
(5)	Annual fee for the survey of each accredited school of nursing	25.00
(6)	Fee for the evaluation of credits of nurses from other states and countries applying for licenses in Louisiana	2.00
(7)	Fee for endorsing credentials for those licensed in Louisiana who apply for license in other states and countries	3.00
(8)	Fee for accrediting a school of nursing	10.00
(9)	Fee for evaluation of credits of students who transfer from one accredited school to another	4.00

The fees provided in this section shall be paid to the secretary-treasurer of the board, and disbursed for the purpose of administering this Part.

Section 930. Causes for denying, revoking or suspending licenses

The board may revoke or suspend any license to practice nursing issued by the board or applied for under this Part or otherwise discipline a licensee upon proof that the person:

(1) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing; or

(2) Is guilty of a crime or gross immorality; or

(3) Is unfit or incompetent by reason of negligence, habit, or other causes; or

(4) Is habitually intemperate or is addicted to the use of habit forming drugs; or

(5) Is mentally incompetent; or

(6) Is guilty of unprofessional conduct; or

(7) Has violated any of the provisions of this Part or the code of ethics promulgated and published by the American Nurses Association.

Section 931. Hearings by board

Upon the filing of a sworn complaint with the board charging the violation of any of the provisions of R.S. 37:930 the secretary of the board shall fix a time and a place for hearing and send by registered mail a copy of the charges together with a notice of the time and place for hearing to the person accused at least ten days prior to the date set for the hearing. The notice shall be mailed to

the last known address of the person accused as appears on the records of the board.

The board may compel the attendance of witnesses, the production of books, papers and documents and administer oaths at the hearing. The accused has the right to have his witnesses summoned by the board and be confronted by the witnesses against him.

The board shall not be bound by strict rules of procedure or other laws of evidence in the conduct of its proceedings. At the hearing the accused may appear either personally or by counsel, produce witnesses and evidence on his own behalf, and cross examine witnesses.

Section 932. Appeal from board decision

The person accused may appeal from the decision of the board to the court having jurisdiction of the board.

Section 933. Revocation or suspension of license in addition to other penalties

If any licensed nurse is found guilty of any of the offenses provided in R.S. 37:936, the board may suspend or revoke the license of the nurse in addition to the penalty prescribed in R.S. 37:936.

Section 934. Injunctions

The board through its officers may obtain an injunction forbidding any person from violating any of the provisions of this Part. This injunction shall not be subject to release upon bond.

Section 935. Anesthetics, administering; penalty

No person holding a certificate to practice nursing shall administer any form of anesthetic to any person under their care unless done by the direction and under the supervision of a licensed physician.

Whoever violates this section shall be fined not more than one thousand dollars, or imprisoned for not more than six months, or both.

Section 936. Violations; penalty

No person shall:

(1) Sell or falsely obtain or furnish any nursing diploma, license, or record, or aid or abet therein; or

(2) Practice nursing under any diploma, license, or record illegally of fraudulently obtained or signed, or issued unlawfully or under fraudulent representation; or

(3) Practice nursing unless duly licensed to do so under the provisions of this Part; or

(4) Use in connection with his name any designation tending to imply that he is a registered nurse unless duly licensed to practice under the provisions of this Part; or

(5) Practice nursing during the time the license issued under provisions of this Part is suspended or revoked;

(6) Practice nursing during the time his license has lapsed for reason of failure to renew; or

(7) Conduct any school of nursing for the training of registered nurses unless the schools have been accredited by the board; or

(8) Violate any provisions of this Part.

Whoever violates this Section shall be fined not less than one hundred dollars for the first offense, and fined five hundred dollars and imprisoned for not less than thirty days for each subsequent offense.

Section 937. Prosecutions by board

Acts constituting violations as set out in R.S. 37:936 may be prosecuted by the attorney at law employed by the

board. This prosecution shall be brought in the name of the state. But nothing in this Section shall prevent or interfere with the prosecution of such proceedings by the attorney general or the district attorney of any parish, when the proceedings have been initiated by him.

Section 938. Part does not confer authority to practice medicine, etc.

This Part shall not confer any authority to practice medicine or surgery, or to undertake the prevention, treatment, or cure of disease, pain, injury, deformity, or mental or physical conditions contrary to any provision of law.

Section 939. Exceptions

Nothing in this Part shall apply to practical nurses, or prohibit:

(1) Gratuitous nursing by friends or members of the family; or

(2) The incidental care of the sick by domestic servants or persons primarily employed as housekeepers as long as they do not practice nursing; or

(3) Nursing assistance in the case of an immediate emergency; or

(4) The practice of nursing by student nurses enrolled in an accredited school of nursing or accredited courses for the training of graduate nurses;

(5) The practice of nursing by graduates of accredited schools or courses pending result of the first licensing examination scheduled by the board following graduation; or

(6) The practice of nursing in this state by any legally qualified nurse of another state whose engagement

requires him to accompany and care for a patient temporarily residing in this state during a period of one engagement, not to exceed six months, if such nurse does not represent or hold himself out as a nurse licensed to practice in this state; or

(7) The practice of Christian Science or religious rules of ceremonies as a form of religious worship, devotion, or healing if the person administering or making use of, or assisting or prescribing, relies on faith and prayer alone, and does not prescribe or administer drugs or medicine, or assist in surgical or physical operations, assume the title of, or hold himself out to be registered nurse.

Section 961. Definitions

As used in this Part:

"Board means the Louisiana State Board of Practical Nurse Examiners;

"Practical nursing" means the performance of nursing services for patients if while performing these services the nurse is at all times under the direction and supervision of a licensed physician or registered nurse acting under the supervision of a licensed physician;

"Accredited school" means a school of practical nursing approved by the board;

"Practical nurse" means a person who practices practical nursing and who is licensed to practice under this Part.

Section 962. Louisiana State Board of Practical Nurse Examiners; method of appointment

The Louisiana State Board of Practical Nurse Examiners is created. The board shall consist of nine members appointed by the governor.

Two members of the board shall be practical nurses, two registered nurses, and five licensed physicians. The appointment of members of the board shall be made from a list, containing twice the number of eligibles to be appointed, submitted to the governor by the Louisiana State Medical Association where the appointee shall be a practical nurse or a licensed physician, or by the Louisiana State Nurses Association where the appointee shall be a registered nurse.

Section 963. Domicile of board

The domicile of the board shall be New Orleans, Louisiana.

Section 964. Terms of members

The terms of the members of the board shall run concurrently with the term of the governor appointing them. Board members shall hold office until their successors are appointed and qualified.

Section 965. Vacancies on board

Vacancies occurring on the board shall be filled, for unexpired terms, by the governor according to the procedure provided in R.S. 37:962.

Section 966. Meetings; quorum

The board shall meet annually at a time and place to be fixed by it, and at such other times as may be necessary.

A majority of the board constitutes a quorum.

Section 967. Officers of board

At its annual meeting the board shall elect from its members a president and secretary-treasurer and shall ap-

point an executive secretary who need not be a member of the board.

Section 968. Compensation of members; expenses

Each member of the board shall receive ten dollars per day for each day actually engaged on board business, plus necessary travel and hotel expenses.

The board shall expend funds received under this Part for the purpose of meeting the expenses incurred by the board in the performance of its functions under this Part.

Section 969. Duties and powers of the board

A. The board shall:

(1) Prescribe curricula and standards for schools for practical nurses and courses for practical nurses;

(2) Accredit practical nurse schools and courses that meet the requirements of the board;

(3) Examine and license qualified applicants, and renew licenses; and

(4) Conduct hearings upon charges calling for discipline of a licensee, or revocation or suspension of a license.

B. The board may:

(1) Issue subpoenas, and administer oaths to persons giving testimony at hearings;

(2) Employ and fix compensations of persons necessary to carry on the work of the board; and

(3) Appoint an attorney to represent it in all matters pertaining to the administration of this Part and fix his compensation and define his duties. As amended Acts 1954, No. 315, Section 1.

Section 970. Qualifications of applicants

An applicant for a license to practice as a practical nurse shall:

(1) Be eighteen years of age, or over;

(2) Be of good moral character;

(3) Be in good physical and mental health;

(4) Be a citizen of the United States or have taken out his first citizenship papers;

(5) Have completed at least grammar school education; and

(6) Have successfully completed the course in an accredited school for the training of practical nurses, or have successfully completed a course of study which the board has determined to be equivalent thereto. As amended Acts 1954, No. 315, Section 2.

Setcion 971. Examination; licensing

Applicants for licenses under this Part shall pass a written examination in all subjects required by the board. The written examination may be supplemented by an oral or practical examination.

If the applicant passes the examination, the board shall issue a license to practice as a practical nurse and authorize the use of the title "Licensed Practical Nurse" or the abbreviation "L.P.N."

Section 972. Licensing by reciprocity

The board may by reciprocity issue licenses without examination to persons who are licensees as practical nurses under the laws of other states if these licensees meet the requirements for practical nursing in this state.

Section 973. Renewals

Every person licensed under the provisions of this Part shall annually renew his license on or before January 31 of each year. Upon the receipt of the application for renewal and the renewal fee, the board shall verify the accuracy of the application for renewal and issue to the applicant a certificate of renewal for the current calendar year.

Section 974. Reinstatement of license

A licensee who allows his license to lapse by failing to renew the license may be reinstated upon satisfactory explanation for the failure to renew and upon payment of both the renewal fee and the reinstatement fee as prescribed in R.S. 37:977.

Section 975. Retirement from practice

A licensee under this Part who desires to retire from practice temporarily shall send a written notice by registered mail to the board. Upon receipt of this notice the board shall place the name of the licensee upon a non-practicing list. While remaining on this list, the licensee shall not be subject to the payment of any renewal fees and shall not practice practical nursing in the state. When the licensee desires to resume practice, the application for renewal of his license and payment of the renewal fee for the current year shall be made by the board as provided in R.S. 37:973.

Section 976. Schools of practical nursing; application; hearings

A school of practical nursing which wishes to be accredited may make application to the board. After investigation and approval of the curricula of the school the board may approve the school and issue a certificate as an ac-

credited school of practical nursing.

If the board finds that an accredited school is not adhering to the requirements of this Part or to the courses prescribed by the board, the board shall give reasonable notices to correct these conditions within a reasonable time. If the conditions are not corrected, the board may, after a hearing with charges detailed and specified, revoke the certificate issued to such school.

Appeals from decisions of the board shall be to the Civil District Court of Orleans Parish within 30 days from the final ruling.

Section 977. Fees

Fees to be paid under this Part are:

(1) Registration fee as a practical nurse	$10.00
(2) Renewal fee for annual renewal of certificate	3.00
(3) Reinstatement fee	2.00
(4) Fee for survey to accredited schools	25.00
(5) Renewal fee for annual renewal of certificate of accredited school	15.00

All fees collected under this Part shall be paid to the treasurer of the board, who shall deposit them to the credit of the board in a national banking institution designated by the board. As amended Acts 1954, No. 315, Section 3.

Section 978. Violations; penalties

No person shall:

(1) Steal or fraudulently obtain or furnish any nursing diploma, license, or record or aid or abet therein;

(2) Practice as a practical nurse under cover of any

diploma, license, or record illegally or fraudulently obtained or signed, or issued unlawfully or under fraudulent representation; or

(3) Practice practical nursing unless duly licensed to do so under the provisions of this Part; or

(4) Use in connection with his name any designation tending to imply that he is a practical nurse, unless licensed to practice under the provisions of this Part; or

(5) Practice practical nursing during the time his license has lapsed because of failure to renew the license; or

(6) Conduct a school of practical nursing, or a school or course for the training of practical nurses, unless the school or course has been accredited by the board; or

(7) Violate any provisions of this Part.

Whoever violates this Section, for the first offense, shall be fined not less than ten dollars nor more than one hundred dollars, or imprisoned thirty days, or both; and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than two hundred dollars, or imprisoned for sixty days, or both.

Section 979. Exemptions

The provisions of this Part shall not apply to:

(1) The nursing by friends or members of the family; or

(2) The incidental care of the sick by domestic servants or persons primarily employed as housekeepers or otherwise as long as they do not practice as practical nurses, or

(3) The giving of practical nursing assistance in the case of emergency; or

(4) Practical nursing by students enrolled in accredited schools of practical nursing by students in training in clinics and hospitals, where nursing is part of the prescribed courses for the students; or

(5) Service by auxiliary workers in hospitals or institutions if the service is supervised by a licensed physician; or

(6) The practice of Christian Science or religious rules or ceremonies as a form of religious worship, devotion or healing if the person administering or making use of, or assisting or prescribing, relies on faith and prayer alone, and does not prescribe or administer drugs or medicine, or assist in surgical or physical operations, assume the title of or hold himself out to be a practical nurse. As amended Acts 1954, No. 315, Section 4.

Section 1001. Contracts for nurses' education programs and for education of other technical personnel

The hospitals supported by the State of Louisiana are authorized to enter into contracts or agreements with colleges, with universities and with other training agencies supported by public funds, in the State of Louisiana in the establishment and maintenance of nurses' education programs and the education of other technical personnel which may be authorized by law and for which funds have been made available for such purposes. Acts 1950, No. 392, Section 1.

Section 1002. Scholarships

The hospitals may provide scholarships to students enrolled in collaborating colleges, universities, or training agencies supported by public funds. Acts 1950, No. 392, Section 2.

Section 1003. Approval of financial agreements by commissioner of administration

Any financial agreement made between hospitals supported by the state and colleges, universities or training agencies supported by public funds shall be made subject to approval by the commissioner of administration. Acts 1950, No. 392, Section 3.

Section 1004. Ratification of prior scholarships and stipends

The programs of scholarships and stipends provided by state hospitals to students in nursing during the year 1950 and in prior years are hereby ratified and approved. Acts 1950, No. 392, Section 4.

LOUISIANA REVISED STATUTES, TITLE 37, SECTIONS 1041-1065

OPTOMETRY

Section 1041. Definitions

As used in this Chapter, the following terms have the meaning ascribed to them in this Section, unless the context clearly indicates otherwise:

(1) "Board" means the Louisiana State Board of Optometry Examiners.

(2) "Licensed optometrist" means a person licensed and holding a certificate issued under the provisions of this Chapter.

(3) "Optometry" means that practice in which a person employs or applies any means other than the use of drugs, medicines, or surgery for the measurement of the powers and testing the range of vision of the human eye,

and determines its accommodative and refractive state, general scope of function and the adaptation of frames and lenses to overcome errors of refraction, and restores as near as possible with these mechanical appliances normal human vision.

Section 1042. Louisiana State Board of Optometry Examiners; appointment; terms of members

The Louisiana State Board of Optometry Examiners is created. This board shall consist of five members who shall be registered optometrists and shall have practiced optometry in this state for seven years.

Each member of the board shall be appointed by the governor from a list of five names presented to him by the Louisiana State Association of Optometrists.

The term of each member shall be five years, but vacancies occurring during the term of a member shall be filled for the unexpired term.

Section 1043. Oath of office

All members of the board shall take the oath required of state officers before entering upon the duties of their office.

Section 1044. Removal of members

The governor may remove any member of the board for inefficiency, neglect of duty or a violation of the provisions of this Chapter.

Section 1045. Officers; meetings; quorum

The board shall choose from its membership a president and a secretary-treasurer. The board shall hold regular semi-annual meetings. Three members shall constitute a quorum for the transaction of business.

Section 1046. Compensation and expenses of members of board

Each member of the board shall receive no more than eight dollars for each day actually spent on board business and, in addition thereto, mileage over the most direct route, at the rate of three cents per mile while attending meetings of the board. Salaries or expenses of the board shall be paid only out of funds received under this Chapter.

Section 1047. Records; receipts and disbursements

The secretary-treasurer of the board shall keep a full record of all acts and proceedings of the board. All moneys shall be received by him and disbursed in administering the provisions of this Chapter.

Section 1048. Powers of the board

The board may:

(1) Adopt by-laws and regulations for the management of the board and define the duties of its officers;

(2) Promulgate and publish rules and regulations for the purpose of administering the provisions of this Chapter;

(3) Employ the necessary persons, including an attorney, to administer this Chapter and fix their compensation; and

(4) Summon witnesses and compel the attendance of witnesses.

Section 1049. Qualifications and requirements of applicants

All persons desiring to practice optometry shall:

(1) Be citizens of the United States, of good moral character;

(2) Have graduated from an approved high school or school maintaining a similar standard;

(3) Have graduated from a school or college of optometry approved by the board;

(4) File with the secretary of the board upon the form furnished an application under oath stating that he fulfills each requirement of this Section and include with the application the papers required by R.S. 37:1050; and

(5) Pass the examination required by R.S. 37:1051.

Section 1050. Application requirements

The application required by R.S. 37:1049 shall be accompanied by a certificate under oath of the applicant's credits from the schools of his graduation, by a photostatic copy of his diploma or certificate of graduation, by the applicant's fee required by R.S. 37:1058, and by a photograph of the applicant. Failure to comply with these requirements shall constitute sufficient grounds to refuse the applicant the right to take the examination.

The application, together with the supporting documents shall be filed with the secretary-treasurer of the board on or before thirty days prior to the date set for examination.

Section 1051. Examination

Examinations given by the board shall be based upon subjects taught in approved schools and colleges of optometry such as: general anatomy, physics, chemistry, biology, physiology, anatomy and physiology of the eye, ocular pathology, ocular neurology, ocular myology, psychology, physiological optics, optometrical mechanics, visual field charting, orthoptics, clinical optometry, and the applications of the general laws of optics and refraction and such other

materials and subjects that are essential in the practice of optometry.

Examinations shall be conducted semi-annually on dates fixed by the board.

All written examinations held by the board and the answers of applicants shall be kept as records by the board for at least one year.

Section 1052. Certificate to practice; registering; evidence

If the applicant successfully passes the examination provided in R.S. 37:1051, he shall receive from the board under its seal a certificate entitling him to practice optometry in this state. This certificate or a renewal thereof shall be the only evidence of the right of a person to practice optometry.

The certificate shall be registered in a record book to be kept by the board for that purpose. A copy of the certificate certified by the secretary of the board shall be received as evidence in all the courts of this state.

Section 1053. Right to re-take examination

If an applicant fails to pass the examination provided in R.S. 37:1051, he may, after the expiration of six months, take a second examination without paying an additional fee, if this examination is held within two years after the failure.

Section 1054. Applicants from other states; waiver of examination

The board may waive the examination provided in R.S. 37:1051 if the applicant presents to the board a satisfactory certificate of registration from a board of optom-

etry examiners of another state, and if the standard of requirements adopted and enforced by such board is equal to that provided in this Chapter.

Section 1055. Recording of certificate

Every person before beginning the practice of optometry in this state shall record the certificate issued to him by the board in the parish in which he desires to practice. Until his certificate is recorded he shall not engage in the practice of optometry.

Section 1056. Annual renewal fees

All licensed optometrists shall pay to the board the annual renewal fee provided in R.S. 37:1058 on or before the first day of March of each year.

Section 1057. Revocation for non-payment of renewal fee; reinstatement

The failure to pay the renewal fee required by R.S. 37:1056 shall operate as an automatic revocation of the certificate. In such cases the optometrist may be reinstated if he files an application for reinstatement with the secretary of the board within one year after the revocation and pays the reinstatement fee as provided in R.S. 37:1058 and all delinquent fees.

Section 1058. Fees

The board shall collect the following fees:

(1)	Application fee for examination	$25.00
(2)	Annual renewal fee	40.00
(3)	Reinstatement fee	25.00

As amended Acts 1962, No. 96, Section 1.

Section 1059. Display of certificate

Every licensed optometrist shall display in his place of business the certificate issued by the board.

Section 1060. List of licensed optometrists

The secretary-treasurer of the board shall, under the signature of the president under oath, file annually with the governor a complete list of all licensed optometrists.

Section 1961. Causes for refusal, suspension, or revocation of certificate

The board may refuse to issue or renew, or may suspend or revoke any certificate for any of the following causes:

(1) Conviction of a crime involving moral turpitude;

(2) Securing a certificate by fraud or deceit practiced upon the board;

(3) Soliciting business from house to house or door to door either directly or indirectly;

(4) Continued practice by a person knowingly having a contagious or infectious disease;

(5) Using the title of "Doctor" or "Dr." as a prefix to his name without using the term "Optometrist" as a suffix to his name or in connection with it; or using the title "Doctor of Optometry", "O.D.", "Opt. D.", or "D.O.S." without holding a diploma from an accredited school of optometry;

(6) Having professional connection with or lending his name to an illegal practitioner;

(7) Failing to record his certificate as provided in R.S. 37:1055;

(8) Employing or using "cappers" or "steerers" to obtain business;

(9) Deceiving or defrauding the public;

(10) Employing directly or indirectly any unlicensed persons or suspended optometrists to practice optometry;

(11) Advertising, in untruthful, improbable, impossible, or misleading statements with reference to the practice of optometry;

(12) Habitual intemperance or gross immorality;

(13) Permitting another to use his certificate or registration;

(14) Advertising any price, credit, terms, or agreement with reference to the practice of optometry;

(15) Using, prescribing, giving away, selling or offering for sale, or having in his possession any eye remedy, lotion, salve, or medicine of any kind or description, or practicing medicine or surgery for the use of carrying on the practice of optometry;

(16) Conviction of any of the provisions of R.S. 37: 1063. As amended Acts 1952, No. 127, Section 12.

Section 1062. Hearing; appeal

Before any certificate may be revoked or suspended, the board shall grant the holder a public hearing of the charges against him. He shall be given notice in writing of these charges at least fifteen days prior to the date of the hearing, the date of which shall be specified in the notice. He shall be given an opportunity to produce testimony in his favor and to cross examine any witnesses against him.

Any person aggrieved by the decision of the board shall have the right to appeal to the courts of the state.

Section 1063. Violations; penalty

No person shall:

(1) Practice optometry without having complied with the provisions of this Chapter; or

(2) Practice optometry without having a valid certificate to practice as a licensed optometrist; or

(3) Advertise or hold himself out to be an optometrist without having a valid certificate issued by the board; or

(4) Refuse or neglect to display his certificate to practice as required by R.S. 37:1059; 94

(5) Purchase or procure by barter any certificate issued by the board with intent to use it as evidence of his qualification to practice optometry; or

(6) Alter materially, with fraudulent intent, a certificate issued by the board; or

(7) Use or attempt to use any certificate issued by the board which has been purchased, fraudulently issued, counterfeited, or materially altered; or

(8) Willfully make any false material statement in an application for a certificate; or

(9) Advertise as free or for a price, any of the following: The examination, or treatment of the eyes; the furnishing of optometrical services; or the furnishing of a lens, lenses, glasses, or the frames or fittings thereof.

The provisions of paragraph (9) of this Section do not apply to the advertising of goggles, sun glasses, colored glasses, or occupational eye-protective devices if they are so made as not to have refractive values.

Whoever violates this Section or any provision of this Chapter, shall, for the first offense, be fined not less than

three hundred dollars or imprisoned for not less than thirty days, or both; and, in addition, shall be enjoined from practicing optometry. For each subsequent offense, in addition to being enjoined from the practice, the offender shall be fined six hundred dollars and imprisoned for not less than ninety days.

Section 1064. Injunctions

The board, through its president may, on motion in any court of competent jurisdiction, take a rule on any person who practices optometry in violation of any provision of this Chapter to show cause in not less than two nor more than ten days, exclusive of holidays, after service thereof why he should not be ordered to cease from the further practice of optometry. This rule may be tried out of term and in chambers; if the rule is made absolute, the order rendered shall be a judgment in favor of the board prohibiting the person from the further practice of optometry in violation of the provisions of this Chapter, and each violation of the injunction shall be considered as a contempt of court and punished accordingly.

Section 1065. Exemptions

The provisions of this Chapter shall not apply to physicians or surgeons licensed to practice in this state nor to retail dealers selling glasses as merchandise in their established places of business. But it is unlawful for any person, except those licensed to practice under the provisions of this Chapter, to have in their possession any trial lenses, trial frames, graduated test cards, or other appliances or instruments for the purpose of rendering assistance to their patrons in the selection of lenses, spectacles, or eyeglasses, or use any device, appliance, or instrument in testing the eyes for the sale of spectacles or eyeglass lenses other than the lenses actually sold, or sell or replace broken lenses in

spectacles or eyeglasses except upon prescription of a licensed optometrist.

No retail dealer shall directly or indirectly, advertise through any medium the sale of glasses, or peddle, solicit, sell, or offer for sale glasses from door to door or house to house, or away from his permanent established place of business.

LOUISIANA REVISED STATUTES,
TITLE 37, Sections 1111-1123

OSTEOPATHS

Section 1111, Definitions

As used in this Chapter:

(1) "Board" means the State Board of Osteopathy.

(2) "Licensed osteopathic physician" means one licensed and holding a certificate under this Chapter.

(3) "Osteopathy" means the treatment of disease, infrimity, deformity, defect, ailment, or injury of a human being, by manipulations applied to the nerve centers, bones, muscles or ligaments, without the use of drugs or medicine, except antiseptics and anodynes locally applied. As amended Acts 1950, No. 160, Section 1.

Section 1112. State Board of Osteopathy; appointments

The State Board of Osteopathy shall consist of five practicing and licensed osteopathic physicians appointed by the Governor. As amended Acts 1950, No. 160, Section 1.

Section 1113. Terms of members; vacancies

Each member shall serve for a term of five years to date from the expiration of the preceding term. Vacancies, other

than the expiration of a term, shall be filled only for the unexpired term.

Section 1114. Meetings; officers; quorum

The board shall meet once a year during the month of October at a place and time designated by the majority of the board, and elect a president, a secretary, and a treasurer to serve for one year.

Three members of the board shall be a quorum except in the granting of certificates to practice osteopathy where at least three affirmative votes are required.

Section 1115. Records

The board shall keep a record of proceedings and a register of all applicants for certificates, containing the name and location of the institution granting the applicant a diploma, the date of the diploma, and information as to whether a certificate has been granted or refused the applicant. The record and the register shall be prima facie evidence of all matters recorded therein.

Section 1116. Powers and duties of the board

The board shall:

(1) Have a common seal;

(2) Formulate rules to govern its actions;

(3) Hold examinations for the granting of certificates; and

(4) Report to the proper prosecuting officer all violations of this Chapter of which it has knowledge or information.

Section 1117. Qualifications of applicants

Any person may be licensed by the board who:

(1) Applies for license on the form furnished by the board;

(2) Has graduated from a legally chartered osteopathic school in which the term of study is at least four scholastic years of nine months each; and

(3) Has passed satisfactorily an examination given by the board on the subjects of anatomy, physiology, symptomatology, chemistry and toxicology, pathology, diagnosis, hygiene, obstetrics, and gynecology, minor surgery and principles and practice of osteopathy. As amended Acts 1950, No. 160, Section 1.

Section 1118. License by reciprocity

The board may in its discretion dispense with examinations in the case of osteopathic physicians duly authorized to practice osteopathy in any state, territory of the United States or in the District of Columbia who shall also present a certificate of registration or license issued by the lawfully constituted board of osteopathy of such a state, territory or district accorded only to applicants with qualifications equal to those required by this state. As amended Acts 1950, No. 160, Section 1.

Section 1119. License fee

The board may charge fifty dollars for the issuance of a license. As amended Acts 1950, No. 160, Section 1.

Section 1120. Recording of certificate

Every person to whom a certificate has been issued by the board shall record it in the parish where he practices. Until the certificate is recorded, the holder shall not practice osteopathy.

The clerk of the district court where the certificate is recorded shall keep a complete list of certificates recorded

with the date of recordation in a book provided for that purpose. The clerk may charge one dollar for the recordation of each certificate.

Section 1121. Births and deaths, certifying

All licensed osteopathic physicians shall have the authority and be required to certify births and deaths to the health authorities of the state and its municipal subdivisions and to comply with all other public health laws and regulations in the same manner, with the same effect, and under the same penalties as other physicians. As amended Acts 1950, No. 160, Section 1.

Section 1122. Annual license tax not required

Licensed osteopaths shall not be required to pay the annual license tax authorized by Article X, Section 8 of the Louisiana Constitution.

Section 1123. Unlawful practice; penalty

No person, unless he is a licensed osteopathic physician and has complied with the provisions of this Chapter, shall practice, or pretend or attempt to practice osteopathy of use "Osteopath", "D.O.", "Osteopathic Physician", "Dr. of Osteopathy", or any other letters or title, either alone or with other qualifying words or phrases under such circumstances as to induce the belief that the person who uses these words or letters is engaged in the practice of osteopathy.

Whoever violates the provisions of this Section shall be fined not less than one hundred dollars nor more than three hundred dollars, or imprisoned for not less than ten days nor more than ninety days, or both. As amended Acts 1950, No. 160, Section 1.

LOUISIANA REVISED STATUTES, TITLE 37, SECTIONS 1171-1208

PHARMACY

Section 1171. Definition

As used in this Chapter, the following terms have the meaning ascribed to them in this Section:

(1) "Approved college of pharmacy" means a school or college of pharmacy or department of a university accredited by the American Council on Pharmaceutical Education and approved by the board.

(2) "Board" means the Louisiana Board of Pharmacy.

(3) "Drug" means articles recognized in the official United States Pharmacopoeia, the official Homeopathic Pharmacopoeia of the United States, or the official National Formulary, or any supplement to any of them, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; it includes, all other articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals, and articles, other than food, intended to affect the structure or any function of the body of man or animals; the term also includes articles intended for use as a component of any drug as herein otherwise defined, but does not include devices or their components, parts, or accessories.

(4) "Pharmacy" means every store, shop, or other place where drugs are dispensed, or sold at retail, or displayed for sale at retail, or where physicians' prescriptions are filled or compounded, or which displays or uses in connection with it a sign bearing the term "pharmacist", "pharmacy", "Apothecary", "drug store", "druggist", "drugs", or other term of similar import. "Pharmacy"

means also every store, shop or other place where the characteristic show bottles or globes filled with colored liquids or otherwise colored, are exhibited and any other place where uses in any advertisement any of the descriptive words enumerated in this paragraph.

(5) "Prescription" means an order for a drug, chemical or medicine, or combination thereof, either written or given orally to a registered pharmacist by a licensed physician, dentist, or veterinarian, to be filled, compounded, or dispensed by a registered pharmacist in a registered pharmacy, and to be preserved on file as required in R.S. 37:1198.

(6) "Qualified assistant" means any person holding a valid certificate as such previously granted by the board.

Section 1172. Louisiana Board of Pharmacy; appointment; qualifications of members

The Louisiana Board of Pharmacy is created. It shall consist of nineteen members to be appointed by the governor as follows: two members shall be chosen from each congressional district as such districts are constituted on July 28, 1948, and three shall be chosen from the state at large.

Each member of the board shall be a registered pharmacist who has been licensed in this state for at least five years and who is actively engaged in the practice of pharmacy and not connected with any school or college of pharmacy in a professional or executive capacity.

Section 1173. Terms; vacancies

The term of each member of the board shall be for six years from the date of his appointment. Any vacancy shall be filled for the unexpired term only.

In making the first appointments to the board the governor shall appoint six members for two years, six for four years, and seven for six years.

Section 1174. Officers of board; removal of officers; president to preside at meetings

The board shall annually elect a president, a secretary, and one or more vice-presidents. Each officer shall serve for one year, or until his successor is elected. Any officer may be removed from office by majority vote of the board, for proper cause after due notice, and an opportunity to be heard.

The president of the board, or in his absence the highest ranking vice-president, shall preside at all the meetings.

Section 1175. Quorum

Seven members of the board constitute a quorum for the transaction of all business.

Section 1176. Compensation, bond, and duties of secretary; disbursements

The secretary shall receive a salary fixed by the board, and all necessary expenses incurred in the performance of his official duties.

The secretary of the board shall furnish a bond in an amount to be fixed by the board, conditioned upon the faithful performance and discharge of the duties of his office according to law.

The secretary shall be the executive officer in charge of the office of the board. He shall make, keep, and be in charge of all records and record books required to be kept by the board, including a record of all registrations required under this Chapter; he shall attend to the correspondence, and perform such other duties as the board may require in keeping with the duties of that office. He shall preserve all books, registers, and records, and deliver them to his successor in office; he shall receive and receipt for all fees collected.

All disbursements shall be made by check or voucher signed by the president and by the secretary.

Section 1177. Records prima facie evidence

The books, registers, and records of the board shall be prima facie evidence of the matter therein recorded, in any court of law.

Section 1178. Powers and duties of the board

A. The board shall:

(1) Make necessary rules and regulations to carry out the purposes and enforce the provisions of this Chapter and furnish copies of them upon request;

(2) Hold meetings at least once a year and at other times when necessary for the examination of applicants for registration and for the transaction of business that may legally come before it;

(3) Make a written report annually to the governor, and to all pharmaceutical associations of this state, if its proceedings, the names of all registrants licensed to practice under this Chapter, of all permits, renewals, suspensions, and revocations and of its receipts and disbursements; and

(4) Report to the prosecuting officer of the state all persons violating the provisions of this Chapter.

B. The board may:

(1) Inspect in a lawful manner the drugs which are sold at retail, offered or exposed for sale at retail, or kept for sale at retail, or which are compounded or dispensed, or kept for compounding or dispensing;

(2) Enter and inspect during business hours any pharmacy or any other place where drugs are sold, offered, exposed, or kept for sale at retail, or are compounded or

dispensed, or kept for compounding or dispensing; and

(3) Employ inspectors, chemists, agents and clerical help for the proper operation of the office, and employ an attorney to assist in prosecutions under this or for any other necessary purpose.

C. The president and the secretary of the board may administer oaths in connection with the duties of the board.

Section 1179. Qualifications and requirements of applicants

Every applicant for examination and registration as a pharmacist must be at least twenty-one years of age, of good moral character and temperate habits, and a graduate of an approved college of pharmacy. In addition the applicant must have passed the examination given by the board and file satisfactory proof, substantiated by proper affidavits, of a minimum of one year of service and experience in pharmacy under the supervision of a registered pharmacist, which service shall be predominantly related to the selling of drugs and medical supplies, compounding prescriptions, preparing pharmaceutical preparations, and keeping records and making reports required under the state and federal laws.

The application for examination shall be made on a form provided by the board at least fifteen days before the date set for the examination. Each application must be accompanied with the examination fee prescribed in R.S. 37:1191, which shall include the cost of the certificate if the applicant is approved.

Section 1180. Notice of examinations

Due notice of all meetings for examination of applicants shall be given to all approved colleges of pharmacy in the state.

Section 1181. Registration by reciprocity

The board may register as a pharmacist, without examination, any person who is duly registered by examination in another state, if he produces evidence satisfactory to the board of having had the required secondary and professional education and training, and is possessed of good character and morals, as demanded of applicants for registration under the provisions of R.S. 37:1179.

Persons of good character and morals who were registered as pharmacists by examination in another state before July 28, 1948, shall satisfy only the requirements which existed in this state at the time they became registered in such other state, if the state in which such person is registered does, under like conditions, grant reciprocal registration without examination, to pharmacists duly registered by examination in this state. Every applicant for reciprocal registration shall, upon filing his application, pay to the secretary of the board the application fee for reciprocal registration provided in R.S. 37:1191; he shall also pay the National Association of Boards of Pharmacy the fee charged by them to defray the expenses of making an investigation of his character, general reputation, and pharmaceutical standing in the state in which he has resided.

Section 1182. Certificates to be signed by board

All original certificates of registration issued by the board shall be signed by a majority of the board at an official meeting of the board.

Section 1183. Duplicate certificates

In case a certificate of a registered pharmacist or a qualified assistant is lost or destroyed, the secretary of the board shall issue a duplicate thereof, upon receipt of an

affidavit setting forth the facts in the case and the fee for a duplicate certificate provided in R.S. 37:1194.

Section 1184. Permits required

No person shall operate, maintain, open, or establish any pharmacy in this state unless he has been issued a permit by the board.

Section 1185. Qualifications for permits

A person applying for a permit to operate a pharmacy shall present satisfactory evidence to the board that the pharmacy will be conducted in full compliance with the law and the rules and regulations of the board; that the location and appointments of the pharmacy are such that it can be operated and maintained without endangering the public health or safety; and that the prescription department of the pharmacy will be constantly under the personal and immediate supervision of a registered pharmacist.

Application for permits required under the provisions of this Section shall be made on a form provided by the board and shall be accompanied by the permit fee provided in R.S. 37:1191. Separate applications shall be made and separate permits issued for each separate place of business for which a permit is required.

Section 1186. Issuance of a permit; refusal to issue

Upon compliance with the provisions of R.S. 37:1185, the board shall issue to the applicant a permit to operate a pharmacy. Permits are not transferable.

No permit shall be issued or continued unless the provisions of R.S. 37:1197 have been complied with and unless the premises of the pharmacy shall be equipped with proper sanitary appliances and kept in a clean and orderly manner.

Section 1187. Renewal of certificates; lapse; reinstatement

Every registered pharmacist and qualified assistant shall pay the secretary of the board between January 1 and March 31 of each year, the annual certificate renewal fee provided in R.S. 37:1191. If the renewal fee for any certificate is not paid by the thirty-first day of March of any year, the certificate shall expire and become null and void. The holder of a certificate which has expired as herein provided may be reinstated only upon written application to the board and upon payment of all lapsed fees and a penalty to be fixed by the board at not more than fifty per cent of the original fee. Actual retirement from the profession by any registered pharmacist for a period not exceeding five years shall not deprive him of the right to renew the registration upon written application to the board by the payment of lapsed fees, without penalty.

Section 1188. Waiver of renewal while in military service

The board shall waive the requirement for the annual renewal of the certificates of registered pharmacists and qualified assistants, including the annual renewal fees, while they are in the military service of the United States or any of its allies.

On the written request of any such pharmacist, the board shall issue a certificate of registration without payment of fees of any kind for the period that the pharmacist is in the military service.

Section 1189. Waiver of renewal when registered fifty years; award

The board, in recognition of contributions to the art of pharmacy, shall waive the requirement of application and fee for annual renewal of certificates of registered pharm-

acists who have been duly registered and licensed to practice in Louisiana for not less than fifty years; in lieu thereof the board shall award to such pharmacists an honorary gold-embossed certificate of registration effective for the remainder of the natural life of the registrant.

Section 1190. Renewal of permits; lapse; reinstatement

Each holder of a permit shall pay annually to the secretary of the board the renewal fee for permits provided in R.S. 37:1191.

Application blanks for renewal permits shall be mailed by the board to each permittee on or before January first in each year. If application for renewal is not made on or before the following thirty-first day of March, the existing permit shall expire and become null and void. No permit shall be reinstated except upon evidence satisfactory to the board of good and sufficient grounds for the failure to file the application for renewal within the time prescribed, and upon payment of the renewal fee provided in R.S. 37:1191 and a penalty of five dollars.

Section 1191. Fees

The board shall charge the following fees:

(1)	Examination fee	$25.00
(2)	Application for reciprocal registration	25.00
(3)	Fee for issuance of permit	10.00
(4)	Fee for duplicate certificate	2.50
(5)	Renewal fee for certificates	5.00
(6)	Renewal fee for permits	10.00

Section 1192. Qualified assistants

The practice of granting examinations and issuing

certificates to qualified assistants is abolished; but all persons to whom such certificates were issued by the board prior to July 28, 1948, shall continue to enjoy their status as such, subject to the requirements of this Chapter.

Section 1193. Employment of qualified assistants

A qualified assistant may be employed in a retail pharmacy conducted under the active personal supervision of a registered pharmacist, but may be left in charge of the prescription department only during the brief and temporary absence of the registered pharmacist.

Section 1194. Compounding and filling of prescriptions; absence of pharmacist

In every pharmacy there must be a registered pharmacist on duty at all times. The filling, compounding and dispensing of prescriptions shall be limited to registered pharmacists and qualified assistants.

If the pharmacist should find it necessary to be temporarily absent, leaving the prescription department unattended either by a registered pharmacist or a qualified assistant, then the prescription department must be closed.

Section 1195. Labeling of drugs and prescriptions

All bottles, vials, jars, boxes, parcels, packages, and other receptacles, containing a drug of a nature poisonous to the human system or to animals, and sold at retail other than on prescription, shall bear a label with the word "poison" printed thereon in large, heavy lettering.

All receptacles containing compounded or filled prescriptions shall bear a label showing the prescription number, the name of the person actually and personally filling, compounding or dispensing the prescription, the directions for its use internally or externally, as specified by the pre-

scriber, the date of its compounding or filling, and the name of the store or the proprietor thereof.

Section 1196. Display of permits

Permits issued under the provisions of this Chapter shall be conspiciously exposed in the place for which the permit was granted.

Section 1197. Equipment required for pharmacy

Every pharmacy must be equipped with proper pharmaceutical utensils so that prescriptions can be properly filled or compounded and United States Pharmacopoeia and National Formulary preparations properly prepared. The board shall prescribe the minimum of professional and technical equipment which a pharmacy shall at all times possess, which shall include the latest revision of the United States Pharmacopoeia and the National Formulary, and supplement thereto.

Section 1198. Records of prescriptions; inspection

There shall be kept in every pharmacy a suitable book or file, in which shall be preserved for a period of not less than five years, every prescription compounded or dispensed. This book or file of prescriptions shall be open to inspection during business hours by the board, or its authorized agents or employees.

No separate records need be made of prescriptions which have been refilled.

Section 1199. Notification of change of business place or employment

A registered pharmacist or qualified assistant changing his place of business or employment shall notify the secretary of the board in writing not later than fifteen days after the change, giving his certificate number, new address, the name of drug store and proprietor thereof, and,

if owner operated or conducted by a partnership, the name of the partners thereof. If the store is owned, operated or conducted by a corporation, the names and addresses of the president, vice-president, and managers thereof must be given.

Section 1200. Suspension or revocation; hearing

After due notice and opportunity for hearing, the board may suspend or revoke any license or any certificate of registration of any registered pharmacist or qualified assistant for and of the following caused:

(1) When the registration or qualification is found to have been obtained by fraudulent means;

(2) When the registrant has been convicted of felony, or is found by the board to be guilty of gross immorality, or addicted to the liquor or drug habit to such a degree as to render him unfit to fill, compound, sell or dispense drugs and medicines;

(3) When the registrant is found to have continually violated the rules and regulations of the board, or to have knowingly permitted anyone in his employ or under his supervision to violate any of the provisions of this Chapter; or

(4) When information in possession of the board discloses that the operations for which the permit was issued are not being conducted in accordance with the rules and regulations of the board or with the provisions of this Chapter, or are being conducted so as to endanger public health or safety.

Section 1201. Notice of decision of board; appeal

If an application for any certificate or permit, or renewal thereof, is refused, or, if any certificate or permit

is suspended or revoked, the board shall notify the applicant in writing of its decision and the reasons therefore.

Any person to whom the board has refused to issue a certificate or a permit, or whose permit has been suspended or revoked, may appeal from the decision and order of board to any court of competent jurisdiction, within thirty days after the refusal, suspension, or revocation; pending the appeal, the decision of the board shall be suspended until judgment is rendered.

Section 1202. Injunction

The board may apply to a court of competent jurisdiction over the parties and subject matter, for a writ of injunction to restrain violations of the provisions of this Chapter. This injunction shall not be released upon bond.

Section 1203. Penalties

Whoever violates any of the provisions of this Chapter shall, for each offense, be fined not more than one thousand dollars or imprisoned for not more than six months, or both, and in addition shall have his permit revoked. After such revocation the permit shall become null and void.

Each day the violation continues shall constitute a separate offense.

Section 1204. Exceptions

Nothing contained in this Chapter shall prevent any registered practitioner of medicine, dentistry, or veterinary medicine from compounding, dispensing, administering to, or supplying his patients with the necessary drugs and medicines for their use.

The provisions of this Chapter do not apply to storekeepers and other vendors dealing in and selling commonly used remedies and household drugs in original packages

as purchased from a manufacturer or wholesaler, or to the manufacture or sale at wholesale or retail of packaged, bottle or non-bulk chemicals, drugs, medicines, medical and dental supplies, cosmetics and dietary foods when identified by and sold under a trademark, trade name, or other trade symbol, privately owned or registered in the United States Patent Office, sold or offered for sale to the general public, if such articles meet the requirements of the Federal Food, Drug and Cosmetic Act.

For the purpose of this Section, "commonly used remedies and household drugs" means only simply remedies which are not deleterious or habit forming and the usage and use of which are generally known and understood by people who are without medical knowledge.

Section 1205. Name of Chapter

This Chapter shall be known as the "Pharmacy Law of the State of Louisiana."

Section 1206. Pharmacy as profession of highest standards

The practice of pharmacy is hereby declared to be a profession of highest standards. Acts 1956, No. 272, Section 1.

Section 1207. Code of ethics; distribution

The Louisiana Board of Pharmacy is directed to promulgage with suitable legal counsel and advice from the Attorney General's Office, a code of ethics that the profession shall abide by, said code of ethics to be for the benefit of the health and welfare of the public.

The Board of Pharmacy shall be responsible for issuing, within six months of August 1, 1956, a copy of said code of ethics to each pharmacist who is a holder of a bona

fide certificate of registration by said board. Acts 1956, No. 272, Section 2.

Section 1208. Honorary title of "ethical pharmacist"; certificates

The Louisiana Board of Pharmacy is directed to confer the honorary title of "ethical pharmacist" on each qualified licensed pharmacist in good standing who has heretofore met or who hereafter meets all of the qualifications and requirements fixed by law or which the law authorizes said board to establish.

The Board of Pharmacy shall be responsible for issuing a suitable certificate evidencing the conferring of the title of "ethical pharmacist" to each eligible pharmacist. Such titles and certificates shall be issued to all pharmacists eligible to receive them within six months after August 1, 1956, and thereafter as they become eligible. Acts 1956, No. 272, Section 3.

LOUISIANA REVISED STATUTES, TITLE 37, SECTIONS 1311-1313

HOMEOPATHIC

Section 1311. Louisiana Homepathic State Board of Medical Examiners; appointment

The Louisiana Homeopathic State Board of Medical Examiners is created. The board shall consist of five members appointed by the governor from a list of names recommended by the Hahneman Medical Association of Louisiana. All members of the board shall be graduate physicians or surgeons and practitioners.

Section 1312. Examination of applicants

The board shall examine all applicants for the practice of the homopathic system of medicine.

Section 1313. Provisions applicable to this Part

The provisions of Part I of this Chapter are equally applicable to the Louisiana Homeopathic State Board of Medical Examiners under this Part except as to the functions of the Louisiana Homeopathic State Board of Medical Examiners which are vested in the Department of Occupational Standards under Chapter 1 of this Title.

Whenever "board" is used in Part I of this Chapter, it includes also the Louisiana Homeopathic State Board of Medical Examiners except in those provisions where the Louisiana State Board of Medical Examiners is specifically designated.

LOUISIANA REVISED STATUTES
Title 37, Sections 491-556

LOUISIANA COSMETOLOGY ACT

Section 491. Title

This Part shall be known and cited as the Louisiana Cosmetology Act. Acts 1964, No. 416, Section 1.

Section 492. Definitions

As used in this Part the following words shall have the meaning herein ascribed to them unless the content clearly otherwise indicates:

(1) "Board" means the Louisiana State Board of Cosmetology.

(2) "Cosmetologist," "Cosmetician," "Beautician," "Hairdressers" or "Operator" means any person who, with hands, or with mechanical or electrical apparatus or appliances, or by use of cosmetic preparations, antiseptics, tonics, lotions or creams engages, for compensation, in any one or any combination of the following practices:

Massaging, cleansing, stimulating, manipulating, exercising, beautifying or doing similar work upon the scalp or the face, neck, arms, bust or upper body of any person. This shall include the practice of arranging, hair dressing, curling, waving, cleansing, styling, bleaching, coloring or similar work upon the hair of another person. This definition shall not include that process of removing surplus hair by the process known as electrolysis.

(3) "Student" means a person engaged in a school in learning to be a cosmetologist, hairdresser or operator, and also includes persons engaged in a school learning to be a manicurist.

(4) "Manicurist" means a person who, for compensation, trims, files, decorates, shapes, or in any way cares for the nails of another person.

(5) "Teacher" means a person who instructs or teaches, for compensation, any of the practices used in the definition of the terms "cosmetologist" or "manicurist" as set forth hereinabove.

(6) "Beauty Shop" or "Salon" means any premises upon or within which is practiced any or all combinations of the arts described in defining cosmetologist or manicurist hereinabove, for a fee.

(7) "School" means any premises wherein the arts described in defining cosmetologist or manicurist are taught for a fee.

(8) "Standard" includes economic, sanitary and proficiency requirements as set forth by this Part and by administrative regulations promulgated hereunder.

(9) "Manager" means that party designed in a supervisory capacity over one or more operators doing business in a beauty shop. Acts 1964, No. 416, Section 1.

Section 493. Board; creation; membership, officers; vacancies; executive secretary

A. The Louisiana State Board of Cosmetology, hereinafter referred to as the "board" is hereby created. The board shall be composed of

(1) The president of the state board of health, who shall act as an ex-officio member and shall serve as ex-officio president of the board.

(2) There shall be six voting members of the board, who shall be appointed by the governor, three from the state at large, and one from each of the three Louisiana Public Service Commission districts. Each member appointed by the governor shall be a duly qualified registered voter of the State of Louisiana; shall have been domiciled in the district from which appointed for twelve consecutive months prior to appointment.

B. Board members shall have been engaged, for at least five years prior to their appointment, in this state, in the activities described in the definition of "operator" and/or "teacher" as set forth herein. The board members shall not all be graduates of the same school of the art, nor shall any board member be connected directly or indirectly with the ownership of a school licensed in this state.

C. The governor in making appointments of board members shall designate one appointed member as chairman of the board. It shall be the duty of the chairman of the board to call such special meetings of the board as might be necessary, to supervise all work required of the executive secretary and to employ, with the approval of the governor, such clerical, administrative, legal, investigation or other professional assistance as might be necessary.

D. Each board member from a designated district shall, with the approval of the governor, appoint inspectors for duties in said district as provided for hereinafter, and shall from time to time, supervise the efficiency of work of said inspectors.

E. The terms of the members of the board shall run concurrently with the term of the governor. The governor may remove any member for cause deemed by him to be sufficient.

F. All vacancies on the board shall be filled by the governor within thirty days; however, members appointed to fill such vacancy shall serve only for the unexpired term of their predecessors.

G. The governor shall appoint an executive secretary as a voting member of the board, who shall be a duly qualified registered voter of the State of Louisiana. It shall be the duty of the executive secretary to promulgate the schedule of regular meetings of the board, which shall be at such time and place as the board may fix its regular examining periods as required by R.S. 37:509. He shall notify all board members of the date, place and hour of special meetings called by the chairman, by providing no less than five days' written notice, regular and special board meetings. He shall advise the governor should any board member, without medical excuse, fail to attend more than three meetings in any one calendar year. He shall, with the chairman, sign all certificates of registration provided for hereinafter, and shall maintain, by class of certificate and in alphabetical order, the names and addresses of all certificate holders provided for hereunder, and shall post, mail or deliver all notices required by the board. Acts 1964, No. 416, Section 1.

Section 494. Bond of secretary

The executive secretary of the board shall furnish to the state a bond in the sum of five thousand dollars with security approved by the governor to insure faithful performance of his duties and of his accounting for funds under his control. Acts 1964, No. 416, Section 1.

Section 495. Quorum

A majority of the voting board members not including the ex-officio president being a non-voting member, shall constitute a quorum for the transaction of all business. In case of a tie vote the absent members shall be polled by witnessed telephone communication. Acts 1964, No. 416, Section 1.

Section 496. Compensation and expenses of the board

A. The president of the State Board of Health shall receive no additional compensation for his duties as ex-officio president of the board. The chairman of the board shall receive a compensation of not more than four thousand eight hundred dollars per year, and the other members of the board shall receive a compensation of not more than four thousand eight hundred dollars per year. All board members shall be reimbursed for necessary traveling and other incidental expenses incurred in the discharge of their duties, after presenting an itemized form, only when properly vouchered with receipts within the bounds of the state in the discharge of their duties which expenses shall not exceed $300.00 per member per month except one individual per annum for purposes of travel to Inter Council Board meeting, to the board at its next official meeting.

B. The executive secretary shall receive a compensation of not more than four thousand eight hundred dollars per year, together with reimbursement for necessary trav-

eling and incidental expenses incurred within the boundaries of the state in the discharge of his duties. Acts 1964, No. 416, Section 1.

Section 497. Salaries and expenses: payment

All salaries and expenses due or incurred by the board shall be paid by voucher drawn by the executive secretary of the state treasurer. All such vouchers are payable only out of the Cosmetologists Board Fund provided for herein. Acts 1964, No. 416, Section 1.

Section 498. Duties and obligations of board

A. In order to carry out the policies and purposes of this Part, the Louisiana State Board of Cosmetology shall prepare such administrative regulations, curricula, requirements and qualifications as may be necessary to protect the health and welfare of the people of this state in using the facilities controlled hereby.

B. The board is authorized, within the limits set forth in this Part, to issue, suspend or revoke licenses for cosmetologists, operators, hairdressers, manicurists, managers, beauty shop owners, teachers, schools and students.

C. The board is authorized to make such investigations and conduct such hearings and/or examinations as are necessary to supervise the regulatory provisions of this Part, require the presence of witnesses at such hearings as may be necessary, enter beauty shops and/or schools for the purpose of investigation, and shall have the right and obligation to refer to the proper law enforcement officials such violations of the criminal laws of the State of Louisiana as it may observe.

D. The board may employ, subject to the limitations

set forth herein, such clerical, investigation, legal or other professional services as it may deem necessary in carrying out its obligations; provided, however, the compensation for all persons so employed must be paid only out of the Cosmetologists Board Fund as provided for hereinafter.

E. The board is directed to prepare, for counsel and guidance of all certified individuals doing business under this Part, a schedule of minimum charges as recommended by the board. This schedule shall be promulgated to all certified individuals and shall be amended by action of the board from time to time in keeping with the general costs of living, costs and obligations of maintaining proper services and standards of cleanliness and health on the part of operators, shop and schools certified hereunder. Acts 1964, No. 416, Section 1.

Section 499. Inspectors

A. The board shall employ no less than two inspectors from each of the three Louisiana Public Service Commission districts, whose authority to act as inspectors shall be limited to the district for which each is employed.

Inspectors shall qualify for civil service rating and shall be paid commensurate with their ratings, together with being reimbursed for necessary expenses, not to exceed two hundred dollars per month, in carrying out their duties as approved by the board.

B. Where necessary the board may employ investigators on a temporary basis, whose compensation shall be not more than twenty dollars per actual day of service, together with reimbursement for necessary travel and expenses in carrying out their duties as directed by the board. Acts 1964, No. 416, Section 1.

Section 500. Certificate of registration required; exemptions

A. No person shall practice cosmetic therapy, beauty culture, hairdressing or manicuring without a certificate of registration as a registered cosmetologist or manicurist issued by the board pursuant to this Part.

B. The following persons are exempt from the provisions of this Part while in the proper discharge of their professional duties:

(1) Persons authorized by law to practice medicine or surgery.

(2) Commissioned medical or surgical officers in the Armed Forces of the United States or within the Veterans' Administration.

(3) Barbers licensed by the State of Louisiana. Acts 1964, No. 416, Section 1.

Section 501. Employment of cosmetologists or manicurists

No person shall permit any person in his employ or under his supervision or control to practice cosmetic therapy or manicuring unless the said person possesses the appropriate certificate of registration as a registered cosmetologist or manicurist. Acts 1964, No. 416, Section 1.

Section 502. Qualification for certificate as a registered cosmetologist

A. Any person is qualified to receive a certificate of registration as a registered cosmetologist who:

(1) Is at least sixteen years of age;

(2) Is of good moral character and temperate habit;

(3) Has, at the time of completion of the required schooling, the equivalent training as would be contemplated in the satisfactory completion of the tenth grade from an approved high school;

(4) Has taken a course at a licensed school of cosmetic therapy approved by the board;

(5) Has passed satisfactorily an examination conducted by the board to determine his fitness to receive a certificate of registration as a registered cosmetologist.

B. Any person who is a cosmetologist registered or licensed under the laws of another state or territory of the United States or of a foreign country or province may be granted a certificate or registration as registered cosmetologist by the board provided that:

(1) He fulfills requirements (1), (2) and (5) of Subsection A above, and

(2) The requirement for registration of license of cosmetologist in the state, territory, country or province from which he moved shall have been in effect during the year next preceding his application, and the state, territory, country or province has substantially equal requirements to those now in force in this state; provided that upon a showing of active practice of cosmetic therapy in the home state, territory, country or province of the applicant has been uninterrupted for three or more years prior to his application, he shall be deemed to have fulfilled this requirement.

C. The proof of educational requirements as set forth herein shall be:

(1) At least a tenth grade education or its equivalent.

(2) The determination of the board on examination for license that the said level has been attained. Acts 1964, No. 416, Section 1.

Section 503. Approved schools of cosmetic therapy; course of study required.

A. No school of training of cosmetic therapy shall be approved by the board unless:

(1) It maintains as course of practical training and technical instruction extending over a period of not less than nine consecutive months and including not less than fifteen hundred hours for the basic course of cosmetology. This course of study shall include lectures, discussion, instructions and mechanical application.

(2) It possesses apparatus and equipment sufficient for the ready and full teaching of its entire curriculum.

(3) It has a total floor space of not less than thirty-five hundred square feet, and no class room shall contain less than four hundred square feet of floor space.

(4) It is in charge of and under the immediate supervision of a licensed teacher of cosmetology with three years teaching experience in an accredited school of cosmetology approved by the board.

(5) It maintains as instructors persons who have completed the curriculum for the teacher's training course and who are licensed as teachers by this board. At least one of whom shall have been licensed as a teacher for three years or more.

(6) It keeps a daily record of the attendance of each student and a record of the progress of each student in achieving the required proficiency.

(7) It establishes grades and holds examinations before issuing diplomas.

(8) It has such facilities as the board may require.

B. Nothing set forth in Subsection A hereof shall deprive any student of the benefit of studies made under the laws of another state, territory, foreign country or province, or another licensed school within the State of Louisiana.

C. The board may require existing schools of cosmetic therapy to be brought up to the standards set forth herein prior to issuance of renewal licenses to said schools for the calendar year 1966 and subsequent years.

D. All approved schools shall provide for a period of "brush up" study, including a course of not less than six weeks duration and containing not less than two hundred hours of study. Acts 1964, No. 416, Section 1.

Section 504. License to conduct school

No school of cosmetology shall operate within the state without a certificate of registration. Any person desiring to conduct a school of training in the vocation of cosmetic therapy or beauty culture shall make an application to the board for a certificate of registration and license, after they have completed the following steps:

(1) Request in writing to the board for information relative to opening a new school.

(2) After receipt of the letter from the applicant, it

shall be necessary for the prospective owner to select a location and request an inspection, notifying the board of the location, and the approximate floor space and type of construction. The inspection fee for the school premises shall be one hundred dollars.

(3) After the location and the floor space, ventilation, fire hazards and the like have been checked and a report thereon has been made to the board in an official meeting, the board shall approve or disapprove the application, and shall notify the applicant in writing of the decision of the board.

(4) If the location is approved, the applicant shall then be notified in writing to submit the following:

(a) A detailed floor plan of the proposed school, drawn to scale and showing the arrangement of classrooms, placement of equipment, electrical outlets, ventilating facilities, and plumbing and lighting facilities, and shall indicate that the school has an outside entrance and exit and that it contains no less than thirty-five hundred square feet of floor space.

(b) A copy of the lease, if space is to be leased.

(c) A copy of the proposed curriculum and a daily schedule covering the entire outline of the nine months' course of study.

(d) Letters of approval from the city fire inspector and city electrical inspector as to fire hazard requirements.

(e) Notarized statements from each of the licensed teachers to be employed, verifying their agreement to teach if the school is licensed.

(f) The applicant shall satisfy the board of his

financial responsibility to such extent as may be determined by the board. The board may, at any time during the operation of licensed schools, require additional data to satisfy said board that licensee is financially responsible. In lieu thereof, however, a surety bond executed by a licensed bonding company in the amount of five thousand dollars in favor of the State of Louisiana shall be conclusive proof of economic responsibility. The beneficiaries of such bonds shall be the students, to the extent of the amount of the tuition paid by each.

(5) After all equipment has been installed, and the board is satisfied of the financial responsibility, the applicant shall request final inspection from the board, furnishing the board with a new school application, properly executed, together with the fee therefore, which shall be three hundred dollars. The annual renewal certificate fee shall be one hundred fifty dollars, and shall be payable on or before March 1 of each year. Failure to make payment prior to the date shall subject the licensee to an additional fee of one hundred fifty dollars.

(6) The board, or one of its agents, shall then make a final inspection to determine if the equipment and all details and requirements are met and shall report its findings to the board.

(7) After final inspection by the board or its agent and a report thereof has been made to the board, the school shall be notified of its acceptance by the board and its recognition for opening date, and the board thereupon shall issue the license.

(8) Whenever any school changes its location or changes its ownership, by transfer or by lease or otherwise, its license may be made applicable to the new ownership

and/or location, provided, the parish in which the school is domiciled remains unchanged, and the board is given notice not less than thirty days prior to the change of address and/or ownership of the school and appropriate examination and inspection by the board reveal that the above requirements have been satisfied, and the notice of change of ownership is accompanied by the payment of the sum of fifty dollars as a reinspection or re-examining fee. Notice of change of address shall be accompanied by the payment of the sum of one hundred dollars as reinspection fee. Acts 1964, No. 416, Section 1.

Section 505. Requirements for certification as a beauty shop

In order to receive a certificate or registration as a beauty shop, the owner of such business shall:

(1) Employ no unregistered person to serve in any capacity or to perform any function for which registration is required under this Part.

(2) Maintain such physical, sanitary, proficiency and administrative facilities as are required by administrative regulations adopted and promulgated by the board.

(3) Submit with an initial application for a new shop location an inspection fee of twenty-five dollars. Acts 1964, No. 416, Section 1.

Section 507. Qualification for certificate as registered manicurist

Any person is qualified to receive a certificate of registration as a registered manicurist who:

(1) Is at least sixteen years of age;

(2) Is of good moral character and temperate habits;

(3) Has taken a course at a school of cosmetic therapy as prescribed by the board, which course shall extend over a period of not less than three consecutive months and shall include not less than five hundred hours of study;

(4) Has successfully passed an examination which shall be prescribed by the board.

All privileges of this certificate are included in the cosmetologist's certificate of registration. Acts 1964, No. 416, Section 1.

Section 508. Application for certificate

Each applicant for examination shall apply to the board in writing on blanks prepared and furnished by the board. Each application shall contain proofs of the particular qualifications of the applicant, shall be certified to by the applicant under oath, and shall be accompanied by the required fee. Acts 1964, No. 416, Section 1.

Section 509. Examination of applicants

The board shall conduct examinations of applicants for certificates as registered cosmetologists or as registered manicurists at such times and places as it determines, provided that the board shall conduct examinations within the geographical limits of each public service commission district of the state no less than twice in each calendar year, which examining periods shall be scheduled so that no less than four calendar months elapse between the holding of these required examinations in any one public service commission district. The date, time and place of these required examinations shall be fixed by the board at a meeting duly called within ten days from July 29, 1964, to cover a period of twelve calendar months thereafter, and shall, at the last meeting so fixed, be continued for an additional twelve months. These required examin-

ing periods shall be immediately followed by a regular meeting of the board. The board may hold such additional examinations at such times and places as it may determine. These examinations shall include practical demonstrations and written and oral tests, and shall embrace the subjects normally taught in approved schools in the course required for the certificate of registration desired. A quorum of the board must be present to conduct all examinations. Acts 1964, No. 416, Section 1.

Section 510. Issuance of certificate of registration

When all requirements of this Part have been complied with, the board shall issue a certificate or registration, which shall designate its holder as a registered cosmetologist, a registered manicurist, a registered manager or a registered teacher. All certificates or registration shall be issued in the name of the board. Acts 1964, No. 416, Section 1.

Section 511. Display of certificate of registration

Every holder of a certificate or registration shall display it in a conspicuous place in his principal office of business or employment. Acts 1964, No. 416, Section 1.

Section 512. Renewal of certificates

A. Every registered cosmetologist, manicurist, teacher, beauty shop owner or manager of a beauty shop or school who continues to actively practice his licensed function shall, on or before the 31st day of January of each calendar year, renew his certificate or registration. Every certificate or registration which has not been renewed timely shall expire on the 1st day of March next following, at which time the holder of such certificate of registration may have his certificate restored only upon fulfilling the requirements and paying the restoration fee as

provided for hereinafter.

B. Any registered certificate holder who retires from his authorized practice for more than three years may resume his practice and renew his certificate or registration upon satisfactory proof that he is qualified to so resume, which shall be provided by a short form examination conducted by the board. Such renewals may be facilitated by attending a "brush-up" course under the auspices of a qualified school of cosmetic therapy for a period of not less than six consecutive weeks and including not less than 200 hours of study.

C. Holders of certificates of registration in any of the states of the United States, any possession or territory, foreign country or the armed forces of the United States shall be considered as having maintained active practice during the term covered by such foreign certificates. Acts 1964, No. 416, Section 1.

Section 513. Grounds for refusal, suspension or revocation of certificate

The board may refuse to issue or renew or may suspend or revoke any certificate of registration for any of the following causes:

(1) Conviction of a felony by the certificate holder, shown by a certified copy of the record;

(2) The obtaining of, or an attempt to obtain, a certificate of registration for money, or for any other thing of value or by fraudulent misrepresentations;

(3) Gross incompetency in the practice of cosmetology;

(4) Continued practice by a person knowingly having an infectious or contagious disease; or mental illness as certified by a competent physician;

(5) Advertising by means of known false or deceptive statements;

(6) Advertising, practicing or attempting to practice under a name other than one's own;

(7) Habitual drunkenness or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs;

(8) Immoral conduct;

(9) Violation of any provision of Part II of this Chapter; or

(10) Failure to pay lawful and proper fees and charges of the board. Acts 1964, No. 416, Section 1.

Section 514. Notice of charge; hearing, witnesses and evidence

A. The board may neither refuse to issue, refuse to renew, suspend or revoke any certificate or registration for any cause unless the person accused has been given at least twenty days' notice in writing of the charge against him and has been accorded a public hearing by the board. At this hearing, the board may administer oaths, subpoena witnesses and require the production of relevant books and papers.

B. The board may immediately suspend the certificate of registration whenever the cause upon which a hearing is held involves:

(1) Conviction of a felony, shown by a certified copy of the records, or

(2) Continued practice by a person having an infectious or contagious disease, as shown by the records of any licensed physician or surgeon in the State of Louisiana.

Section 515. Record of proceedings

The secretary of the board shall keep a record of all the proceedings of the board. The record relating to the issuance, refusal, renewal, suspension and revocation of certificates of registration shall contain the name, place of business, and residence of each cosmetologist and the date and number of his certificate of registration. Acts 1964, No. 416, Section 1.

Section 516. Fees

Fees to be paid for services rendered under the provisions of this part are as follows:

(1) For any examination given by the board to an applicant	$ 10.00
(2) For a certificate of registration as a registered cosmetologist issued to a resident of the State of Louisiana	5.00
(3) For a certificate of registration as a registered cosmetologist issued to an out-of-state registered cosmetologist not a resident of Louisiana	25.00
(4) For a certificate of registration as a registered manicurist	5.00
(5) For a certificate of registration as a registered manicurist to a non-resident registered manicurist	25.00
(6) For a certificate of registration as a registered student	2.00
(a) Non-resident student	10.00
(b) Re-registration or transfer fee	4.00
(7) For a certificate of registration for a regis-	

tered teacher 5.00

(8) For a certificate of registration for a registered manager 5.00

(9) For a certificate of registration for a beauty shop 10.00

(10) For a certificate of registration for a non-resident beauty shop owner 50.00

(11) For a certificate of registration for a school, the initial license fee shall be 300.00

(a) Renewal fee for a school shall be 150.00

(b) For non-resident ownership the initial license fee shall be 600.00

(c) Renewal fee for non-resident ownership shall be 450.00

(12) For timely renewal of all certificates of registration the fee shall be identical to those set forth hereinabove.

(13) For the restoration of any expired certificate of registration, the reinstatement fee shall be double the applicable fee set forth hereinabove.

The fees set forth herein shall be in addition to inspection fees provided for in other sections of this Part. Acts 1964, No. 416, Section 1.

Section 517. Cosmetologists' board fund

At least once a month the secretary shall turn over to the State Treasurer all monies collected, taking his receipt therefore. The treasurer shall keep these funds in a separate account to be known as the "Cosmetologists' Board Fund." The monies in said fund shall be used for no other

purpose except to pay the expenses and salaries of the board. Acts 1964, No. 416, Section 1.

Section 518. Report to governor

The board shall make reports annually to the governor of its work during the year as the governor requires, together with any recommendations it deems expedient. Acts 1964, No. 416, Section 1.

Section 519. Obtaining certificate by fraud

No person shall obtain or attempt to obtain a certificate of registration for money, or for any other thing of value by fraudulent misrepresentation. Acts 1964, No. 416, Section 1.

Section 520. Inspection of shops by board

The board or the city or state board of health may enter and inspect all cosmetic places of business during business hours. Acts 1964, No. 416, Section 1..

Section 521. Penalty

A. Holders of registered certificates of any category who violates Sections 500, 501 and 519 of this Part may, after investigation and hearing by the board, be penalized as follows:

(1) The board may revoke said certificates of registration for any of the causes set forth in this Part;

(2) The board may fine violators not more than one hundred dollars per violation; and

(3) In addition to either of the foregoing penalties, the board may charge the violator such sums as the board may have expended in investigating and hearing his case, not to exceed two hundred dollars per investigation.

B. Penalties and costs shall be deposited in the cosmetologists' board fund.

C. Nothing contained herein shall deny certificate holders of the privilege of enjoining the imposition of the penalties described hereinabove and afforded himself of recourse to the courts of the state of Louisiana, as provided by the constitution of this state. Acts 1964, No. 416, Section 1.

Section 541. Powers of board

The board shall act as a control board for the purpose of administering this Part. It shall have any powers necessary for the purpose of administering and enforcing this Part. Generally, it may:

(1) Supervise, investigate, and regulate the beauty culture and hair dressing industry of the state.

(2). Supervise and regulate the ownership and operation, conduct, teaching in and beauty culture treatments in beauty schools in the state.

(3) Investigate, as the conditions permit, and regulate, as conditions require, all matters pertaining to the proper supervision and control of the operation and conduct of beauty schools and the teaching personnel, the health and fitness of students, the efficiency and sanitation of the materials and methods used therein in beauty culture treatments for the public.

(4) Subpoena cosmeticians, beauticians, and hair dressers, as well as their records, books, and accounts; subpoena owners, operators, teachers, students, and employees of beauty schools, and their records, books, and accounts, and other persons from whom information may be desired, to carry out the purpose and intent of this Part. It may also issue commissions to take depositions of wit-

nesses absent from the state. Any member of the board or any designated employee may sign and issue subpoenas and may administer oaths to witnesses.

(5) Act as mediator and arbitrator in any controversy or issue that may arise among or between cosmeticians, beauticians, and hair dressers, individually or as groups, and in any controversy or issue that may arise among or between owners, operators, teachers, and students individually or as groups. There shall be no interference with the authority of the labor mediation board.

Section 542. Records

A. The board may require the licensee to keep the following records:

(1) A record of all cosmetic therapy, beauty culture, and hair dressing work performed and the price thereof.

(2) A record of all the expenses incident to the operation of a beauty culture and hair dressing establishment.

(3) A record of the net profits of any such establishment from month to month.

(4) Any other records and information which the board thinks necessary for the proper enforcement of this Part.

B. The board may require any owner or operator of any beauty school to keep the following records:

(1) A record of all beauty work performed and the price thereof.

(2) A record of all expenses incident to the operation of any beauty school.

(3) A record of the net profits of any beauty school from month to month.

(4) A record of tuition charged and received by any beauty school.

(5) Any other records and information necessary for the proper enforcement of this Part.

Section 543. Entry and inspection

Any member of the board or any employee designated for the purpose has access to and may enter at all reasonable hours all places where beauty culture, hair dressing, or cosmetic therapy is being carried on and all beauty school establishments. Any member of the board or designated employees may also inspect all books, papers, records, or documents in any place within the state for the purpose of ascertaining facts to enable the board to administer this Part.

Section 544. Investigations

The practice and procedure of the board with respect to any investigation by the board authorized by this Part shall be in accordance with rules and regulations promulgated by the board. These shall provide for reasonable notice to all persons affected by orders made by the board after the investigation, an opportunity to be heard either in person or by counsel, and an opportunity to introduce testimony in their behalf at a public hearing held for that purpose.

The board, or any member thereof and its secretary may conduct the hearing.

Section 545. Information not to be divulged

No member of the board nor any officer, agent, or employee thereof shall divulge to any person the contents of any document, paper, or record examined by him in the performance of his duties under this Part or any informa-

tion obtained by him in the course of his investigations except when necessary to carry out the purpose of this Part.

Section 546. Rules and orders

The board may adopt and enforce all rules and orders necessary to carry out the provisions of this Part. Every rule or order of the board so adopted shall be posted for public inspection in the main office of the board and a certified copy filed in the office of the secretary of the board.

And order applying only to persons named therein shall be served on the persons affected by personal delivery of a certified copy or by mailing a certified copy in a sealed envelope with postage prepaid to each person affected thereby, or, in the case of a corporation, to an officer or agent of the corporation upon whom a summons may be served in accordance with law.

The posting in the main office of the board of any rule or order not required to be served and the filing of it in the office of the secretary of the board shall constitute due and sufficient notice to all persons affected by the rule or order. The provisions of this Section as to service of orders do not apply to orders fixing prices, for which provision is made in R.S. 37:550, nor to orders fixing minimum prices for tuition of students in beauty schools, for which provision is made in R.S. 37:551.

Section 547. Disobedience of board order or subpoena; court proceedings

When any person fails to comply with an order or subpoena issued by the board or by any of its members, or its secretary or agents, or when any witness refuses to testify to any matter regarding which he may be lawfully interrogated, the district judge of the parish in which the

person or witness resides shall, on the application of any member of the board or its secretary or agent, compel obedience by attachment proceedings as for contempt, as in other cases.

Section 548. Compensation of subpoena-server and of witnesses

Each officer who serves a subpoena shall receive the same fees as a sheriff. Each witness who appears, in obedience to a subpoena, before the board or a member thereof, or its secretary, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in the courts of this state, which shall be audited and paid in the same manner as other expenses are audited and paid upon the presentation of proper vouchers approved by any two members of the board.

No witnesses subpoenaed at the instance of a party other than the board or one of its members, or its secretary or agents or employees, is entitled to compensation unless the board certifies that this testimony was material to the matter investigated.

Section 549. Reports

Each licensee shall, as often as required by rule or order of the board, file a verified report on forms prescribed by the board of all matters on account of which a record is required to be kept, together with any other information of facts that may be pertinent and material within the scope of the purpose and intent of this Part. This report shall cover a period of time specified in the order.

Section 550. Order fixing minimum prices for beauty work and service

The board may approve price agreements establishing

minimum prices for beauty work and service by registered beauticians or by students regularly enrolled in licensed beauty schools. However, the minimum price for beauty work and services by students shall not exceed fifty percent of the minimum price for like beauty work and services by registered beauticians. After ascertaining by such investigations and proof, as conditions permit and require that the price agreements are just and; under varying conditions, will best protect the public health and safety by affording a sufficient minimum price for cosmetic therapy work to enable the practitioner thereof to furnish modern and healthful services and appliances, so as to minimize the danger to the public health incident to their work, the board shall fix by official order the minimum price for all work usually performed in a beauty parlor or shop or cosmetic therapy establishment.

The board shall take into consideration all conditions affecting the cosmetic therapy profession in its relation to the public health and safety. It shall also take into consideration the necessary costs incurred in the particular judicial district in maintaining a proper business establishment in a clean, healthful, and sanitary condition.

At any time that the board, after investigation made either upon its own initiative or upon the complaint of a representative group of cosmeticians, determines that the minimum prices fixed are insufficient to properly provide healthful services to the public and keep the establishment sanitary, it may vary or re-fix these minimum prices.

Section 551. Order fixing minimum prices for tuition for students

The board may approve price agreements establishing minimum prices for tuition for students in beauty schools, signed and submitted by an organized group of at least

seventy-five per cent of the owners of the duly licensed beauty schools within the state. After ascertaining by such investigation and proof as conditions permit and require, that the price agreement is just and under varying conditions will best protect the public health and safety by affording a sufficient minimum price for tuition for students in beauty schools to enable the beauty school owner to furnish modern and healthful service and appliances, properly qualified teachers, efficient and sanitary equipment and material, so as to minimize the danger to public health incident to the beauty work performed by the students for the public, so as to increase the character and qualifications of the students who are to be graduated as registered beauticians; and so as to minimize the danger to the health of the students incident to their work and schooling in beauty schools. The board shall fix by official order the minimum price for tuition for students in beauty schools in the state.

The board shall take into consideration all conditions affecting the beauty profession and the beauty school business in their relation to the public health and safety, including public beauty culture services rendered to the public in beauty schools. The board shall also take into consideration the necessary costs incurred in the state in maintaining beauty schools in a clean, healthful and sanitary condition and in properly and efficiently educating the students.

At any time that the board, after investigation, made either upon its own initiative or upon the suggestion or complaint of a representative group of beauty school owners determines that the minimum price so fixed is insufficient to properly provide healthful service to the public, keep the beauty schools sanitary, provide efficient, well trained teachers, insure adequate, efficient equipment and

material, provide proper and adequate training for students, it may vary or refix the minimum prices for tuition for students in beauty schools in the state.

Section 552. Review of board's order

Any applicant or licensee who thinks himself apprieved by any action of the board taken under any of the provisions of this Part may, within thirty days after receipt of a copy of the order of the board, file a petition in the district court. The petition shall set forth the errors complained of. If, upon consideration of the records, the court is of the opinion that the order was unlawful or unreasonable, it may reverse, vacate, or modify it. The board shall be the defendant in the suit. Unless they are waived, citations and other judicial process shall be served upon the president of the board, or, if he is absent, upon any member of the board, or by leaving a copy at the office of the board in New Orleans.

Upon service or waiver thereof, the board shall file its answer, accompanied by a transcript of the records of the board, the original papers or transcripts thereof, and a certified transcript of all evidence adduced upon the hearing before the board in the proceedings complained of.

No proceeding to vacate, reverse, or modify a final order rendered by the board shall stay the execution or effect thereof unless the district court, a judge thereof in vacation, on application and three days' notice to the board, allows the stay. In that event, the petitioner shall execute his bond in a sum prescribed by the court and with surety satisfactory to the court, conditioned upon the prompt payment of all damages arising from or caused by the delay in the effectiveness or enforcement of the order complained of.

Section 553. Enforcement of Part through court action

The board may institute any actions in the courts which appear necessary to enforce compliance with any provisions of this Part or with any rule, subpoena, or order of the board made pursuant to the provisions of this Part. In addition to any other remedy, the board may apply to the district court for relief by injunction.

Section 554. Expenses of administration

All expenses incidental to the administration of this Part shall be paid from the funds of the board of control, in the manner and form governing other expenditures of that board.

Section 555. Construction of Part

Nothing in this Part abrogates or affects any provision of the public health laws, the state sanitary code, any local health ordinance or regulation, or Part I of this Chapter.

Section 556. Penalty

Whoever violates any provision of this Part or of any rule, subpoena, or order of the board, lawfully made pursuant to this Part, except as otherwise expressly provided by this Part, shall be fined not less than twenty-five dollars nor more than three hundred dollars or imprisoned for not more than six months, or both. Each day during which the violation continues is a separate violation.

LOUISIANA REVISED STATUTES TITLE 37: Sections 611-621

PODIATRY

Section 611. Definitions

For the purpose of this Chapter:

(1) "Board" means the Louisiana State Board of Medical Examiners.

(2) "Podiatry" means the medical, mechanical or surgical treatment of the minor ailments of the human foot, such as bunions, callouses, corns and ingrowing and abnormal nails. As amended Acts 1964, No. 432, Section 1.

Section 612. License required; examining board; penalty

No one shall practice the branch of medicine known as podiatry nor advertise or hold himself out as a podiatrist unless duly licensed to do so by the board after examination conducted by the board or a committee thereof.

When acting as a board of examiners of applicants for licenses to practice podiatry in this state, the board or the committee thereof, may appoint two members of the Louisiana State Podiatrists' Association to constitute and form part of this examining board under rules and regulations adopted by the board.

Whoever violates this Section shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned for not less than three months nor more than one year, or both. As amended Acts 1964, No. 432, Section 1.

Section 613. Compensation and expenses of board or committee members

Each member of the board, or committee thereof, shall receive ten dollars for every day actually spent in the performance of his duties in connection with the provisions of this Chapter, and the necessary traveling expenses actually incurred, not exceeding three cents per mile each way. The compensation and traveling expenses and any incidental expenses necessarily incurred by the board or any member shall, if approved by the board be paid from the treasury of the board, but only from the fees received under the provisions of this Chapter and paid into that

treasury by the board. As amended Acts 1964, No. 432, Section 1,

Section 614. Persons exempt

This Chapter does not apply to:

(1) Commissioned medical or surgical officers of the United States Army, Navy, or Marine Hospital Service when in the actual performance of their official duties;

(2) Physicians duly registered under the state medical laws; or

(3) Any legally licensed podiatrist of another state taking charge of the practice of a legally licensed podiatrist of this state during the latter's temporary absence herefrom, upon the written request to the board of the licensed podiatrist of this state. As amended Acts 1964, No. 432, Section 1.

Section 615. Examinations

Any person who furnishes the board with satisfactory proof that he is possessed of the following qualifications shall, upon payment of a fee of fifteen dollars, be examined by the board;

(1) That he is twenty-one years of age or over;

(2) That he is of good moral character; and

(3) That he has a diploma or certificate of graduation from a recognized school of podiatry or equivalent institution, having a minimum requirement of an eight months course.

Examinations shall be written, oral or clinical, or any combination thereof as determined by the board.

The examination shall embrace the subjects of anatomy and physiology of the foot, diagnosis and treatment,

asepsis, therapeutics and clinical podiatry, but shall be so limited in their scope as to cover only the minimum requirements for podiatry education as provided in this Chapter and shall not be construed to require of the applicant a medical or surgical education. As amended Acts 1964, No. 432, Section 1.

Section 616. License after passing examination; re-examinations; designation of licensee

If an applicant is found qualified in the examination given, he shall be licensed and shall receive in testimony thereof a certificate signed by the chairman and secretary of the board.

An applicant who fails to pass the examination satisfactorily to the board and is therefore refused a license is entitled, within one year after the refusal, to a re-examination at a meeting of the board called for the examination of applicants, upon payment of an additional fee of two dollars for each re-examination. However, two such re-examinations shall exhaust his privilege under his original examination.

Any person to whom a license certificate is granted under the provisions of this chapter may designate himself as a licensed podiatrist. As amended Acts 1964, No. 432, Section 1.

Section 617. Unlawfully obtaining license; penalty

No person shall unlawfully obtain a license under this Chapter, whether by false or untrue statements in his application to the board or by presenting to the board a fraudulent diploma, certificate or license, or one fraudulently obtained or by any other means.

Whoever violates this Section shall be fined not less than one hundred dollars nor more than five hundred dol-

lars or imprisoned for not less than three months nor more than one year, or both. As amended Acts 1964, No. 432, Section 1.

Section 618. Grounds for refusing or revoking license

A. After investigation and hearing, the board may, by majority vote, refuse to issue or may revoke or cancel any license issued under this Chapter for any one, or any combination, of the following causes:

(1) Conviction of a violation of R.S. 37:612 or 37:617;

(2) Conviction of any criminal offense, as shown by the court records of any state;

(3) Proof that the license was granted upon mistake of material fact; or

(4) Proof of grossly unprofessional and dishonest conduct.

B. For purposes of this Section, the words "unprofessional and dishonest conduct" mean:

(1) Having professional connection with or lending the use of one's name to an unlicensed podiatrist or having professional connection with any one who has been convicted in court of any offense whatsoever.

(2) Being guilty of offenses involving moral turpitude or habitual intemperance; being habitually addicted to the use of morphine, opium, cocaine or other drugs having a similar effect; or using, selling or giving away any substance or compound containing alcohol or drugs for other than legal and legitimate purposes. As amended Acts 1964, No. 432, Section 1.

Section 619. Investigations and report of violations

The board shall investigate all complaints of violations of R.S. 37:612, 37:617 or 37:618 and shall report all violations of R.S. 37:612 or 37:617 to the proper prosecuting officers. As amended Acts 1964, No. 432, Section 1.

Section 620. Registration of licenses

Every person to whom a license has been issued under this Chapter shall, within one month of the date of receipt thereof, submit it to the clerk of court of the parish in which he has his legal residence or his usual place of business and make oath that he is the person designated therein. Upon his payment of a fee of one dollar, the clerk to whom the license is presented shall register the name and address of the person designated in the license and the date and number inscribed thereon. Within one week of this registration, the clerk shall file with the board a duplicate copy of the record made. As amended Acts 1964, No. 432, Section 1.

Section 621. Use of appliances or anesthetics

Podiatrists may use any mechanical appliances which they think necessary for the relief or cure of their patients' ailments. However, they may not correct deformities by the use of the knife or by amputation of the foot or toes. They may only use local anesthetics. As amended Acts 1964, No. 432, Section 1.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1288

ENGLAND, ET AL.,

Appellants,

versus

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, ET AL.,

Appellees.

APPLICATION FOR REHEARING

J. MINOS SIMON,
Post Office Box 52116 OCS,
Lafayette, Louisiana,
Attorney for Plaintiffs-Appellants.

Of Counsel:
SIMON, TRICE & MOUTON

HAUSER-AMERICAN, "LEGAL PRINTERS", 441 GRAVIER STREET, NEW ORLEANS, LA.

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APPLICATION FOR REHEARING

Plaintiffs-Appellants respectfully pray that a rehearing be granted to them in respect to the decision of this court of June 20, 1966, affirming the decision of the United States District Court, Eastern District of Louisiana, in support whereof plaintiffs-appellants respectfully represent that:

1. THE AFFIRMANCE OF THE DECISION APPEALED FROM OPERATES TO DECLARE A NATIONAL POLICY, AS THE SUPREME LAW OF THE LAND, IN THE AREA OF THE HEALING ART, WHICH COMPELS ALL PHYSICIANS, INCLUDING CHIROPRACTIC PHYSICIANS, PROPERLY EDUCATED AND TRAINED IN ACCEPTABLE THERAPY, TO HOLD THE VERY MEANS OF THEIR PROFESSIONAL EXISTENCE AT THE MERE WILL OF ALLO-

PATHIC PHYSICIANS, REPRESENTING A MERE SECT OF THE HEALING ART, CONTRARY TO THE CONSTITUTIONAL DOCTRINES OF *Yick Wo v. Hopkins*, 118 U.S. 355; *Dent v. West Virginia*, 129 U.S. 114, 9 S. Ct. 231, 32 L. Ed. 628; *Jacobson v. Mass.*, 197 U.S. 11, 25 S. Ct. 358, 49 L. Ed. 643; *Watson v. Maryland*, 218 U.S. 173, 30 S. Ct. 644, 54 L. Ed. 987; *Graves v. Minn.*, 272 U.S. 425, 47 S. Ct. 122, 71 L. Ed. 331; *Williamson v. Lee Optical Company*, 348 U.S. 483, 75 S. Ct. 461, 99 L. Ed. 563 AND *Douglas v. Noble*, 261 U.S. 165, 43 S. Ct. 303, 67 L. Ed. 590.

This decision, in the face of an undisputed evidentiary record, demonstrating the existence of a fundamental difference between the therapeutic concepts and practices of allopathy as opposed to chiropractic, establishes, nevertheless, compulsory conformity in the treating of human ailments, by sanctioning state law which makes it virtually impossible[1] for a qualified physician to be licensed to engage in the practice of any concept of treatment other than the allopathic concept. Though properly educated and trained as a chiropractic physician, an applicant for license to engage in the treatment of ailing persons by chiropractic therapy, must first stand an examination in treatment by drugs and surgery, a therapeutic regimen of allopathy only. Though a graduate and holder of a diploma

[1] An applicant for license under the Louisiana Medical Practice Act, because of excessive administrative demands, must produce a diploma from a college approved by the American Medical Association. The evidentiary record shows, without dispute, that one may acquire a knowledge of chiropractic only in a chiropractic college. No chiropractic colleges are approved by the American Medical Association. Only colleges teaching the theory and practice of allopathy are approved by the American Medical Association. Consequently, a chiropractic physician must therefore be a graduate of both colleges before he would even be permitted to stand an examination in subjects of therapy that are exclusively related to allopathy. This arbitrary administrative demand imposes upon a chiropractic physician unreasonable study and application and therefore violates the constitutional principle of *Dent v. State of West Virginia*, (1889) 129 U.S. 114, 9 S.Ct. 231, and is itself unconstitutional.

from a college in good standing teaching chiropractic, an admitted sect of the healing art, he is not even permitted to stand such an examination, not because of the state law, but the allopathic physicians on the board which administers the law go beyond the outer limits of the law[2] and arbitrarily require the production of a diploma from college approved by the American Medical Assoc., a private corporation operated by allopathic physicians only.

MORE THAN THIS, immediately following the issuance of the decision appealed from in this case, the president of the Louisiana State Medical Society (a society of allopathic physicians only) and a witness in this case, made a public call, over all news media, to the district attorneys and law enforcement officials of Louisiana for the immediate criminal prosecution of all chiropractic physicians in Louisiana, citing the court's decision as the edict for an open season for such pastime frolics.[3] Immediately

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[2] Louisiana Revised Statute, Title 37, Section 1271 provides: "Any person who wishes to practice medicine shall: * * * (4) Present to the board a diploma from a college in good standing of ANY SECT teaching medicine or the healing art: * * *"

[3] The following Associated Press report appeared in the November 12, 1965, issue of the *Times Picayune Newspaper* of New Orleans, Louisiana: "Baton Rouge, La. (AP)—The president-elect of the Louisiana State Medical Society called Thursday for district attorneys and sheriffs to arrest chiropractors for practicing without a state license.

"Dr. Joseph Sabatier of Baton Rouge said a federal court ruling in New Orleans Thursday frees state and local authorities to move against chiropractors.

"A three-judge panel held that the State Board of Medical Examiners has the authority to refuse licenses to chiropractors who do not have medical degrees.

"Since Louisiana law requires persons practicing any of the healing arts to be licensed by the medical examiner board, the chiropractors argued that they were being discriminated against. In their suit, they contended the discrimination deprived them of their rights unfairly in violation of the 14th Amendment to the federal constitution.

"The suit has been in the courts for the past eight years. During that time, by agreement, no effort has been made to enforce the law against chiropractors, Dr. Sabatier said.

"The federal court dismissed the suit, holding that the Louisiana Medical Practices Act was constitutional as it applied to chiropractors. This act requires chiropractors to have medical degrees and to pass surgery tests administered by the board in order to be licensed.

"The federal court ruling, said Dr. Sabatier, 'will permit prosecu-

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following the affirmance by this court of the lower court decision, another public call was made to the same law enforcement officials to pick up chiropractic physicians in Louisiana as common criminals; this time it was defendants' counsel who acted as spokesman for the autocratic allopathic group.

Thus, already heavily ladened by the burden of arbitrary police power inherent in the state law and the excessive administrative action pursued thereunder, plaintiffs and all chiropractic physicians of Louisiana face the prospect in the immediate future of bearing the brunt of the police stick, and the indignity and privation of being herded into dingy jail cells, all because they wish to accommodate the ailing patient's reasonable choice of the type treatment he wants for his ailments, that are incurable by drugs and the surgeon's knife.

As the law of the land, should this decision stand, this nightmarish circumstance will have the capability of being imported to the other states of the Nation[4] and expanded to include all other acceptable modes of treatment,

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[3] (Continued)
tion of them by authorities for practicing medicine without a license. We think our district attorneys and sheriffs will uphold the law.'

"He said the number of chiropractors in Louisiana has increased from 13 in 1952 to 278 today.

"Officials of the State Chiropractors Association could not be reached for comment on the federal court ruling."

[4] The American Medical Association already has declared war for the total annihilation of the chiropractic profession throughout the United States. The battle cry is "quackery." The following news release appearing in the April 18, 1966, issue of *The Oregonian* reports the statement of Doyle Taylor, investigator for the American Medical Association, as follows:

"CHICAGO—The American Medical Association is making chiropractors its primary target in a national campaign against medical quackery, according to the Association's chief investigator.

"In the past the AMA has been somewhat reserved in its pronouncements about chiropractors, but investigator Doyle Taylor assailed them as 'cultists who deny the very premises of scientific medicine.'

"Chiropractors in general have little scientific medical education, he said, and the nation's schools for chiropractors are staffed mostly

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differing from allopathy, so that in the end no American citizen will enjoy the freedom to be treated by any methods or means other than drugs and the knife, the thalidmide tragedy, for example, notwithstanding.

2. NO STATE, EITHER BY SOPHISTICATED OR SIMPLEMINDED MODES, CAN CONSTITUTIONALLY DENY A CITIZEN OF THE RIGHT TO PRACTICE A USEFUL PROFESSION OR THE COROLLARY RIGHT TO THE REASONABLE CHOICE OF THE TYPE TREATMENT HE DESIRES FOR HIS AILMENTS. *England v. Louisiana State Board of Medical Examiners*, 259 F. 2d 626, 627.

Monopoly in medical treatment, if permitted, poses a threat to the national interest. No particular group or discipline of the healing art possesses a therapeutic panacea. There resides in each a certain inadequacy and a certain risk.[5] Unlike defendants' pose of omniscience, a more objective observer and an outstanding authority of

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[4] (Continued)
by persons who have no degrees from accredited institutions.
"Taylor told a conference on health education of the public here Saturday that the AMA's committee on quackery considers the chiropractic problem the biggest it faces in an education drive on medical quacks. He said the AMA will seek revisions of licensing requirements in the 47 states that license the practice. They will also seek legislation requiring stiffer educational standards for chiropractors."
Needless to say, the biased statement as to the qualification of chiropractic physicians is unfounded in fact.

[5] For an alarming account of the needless deaths and iatrogenic disease consequent to allopathic drugging, the reader is directed to the book entitled *Diseases of Medical Progress*, 2nd Edition, edited by Robert H. Moser, M.D., and contributed to by twelve other medical physicians, which book is made part of the evidence in this case. At page 3, the authors exclaim:
"Tons of antibiotics are produced annually; the clinician is offered hundreds of different preparations. * * * The problem of antibiotic-induced diseases has grown each year until it has assumed major proportions."
The indiscriminate administration of drugs results in an alarming useless treatment by drug. These authors say: (p. 3) "It has been estimated that in only one of ten instances are antibiotic given on the basis of proper indications. * * * Rosenthal reviewed *thirty* cases of

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the allopathic profession, John McM Mennell, M.D., Special Lecturer, Department of Physical Medicine, Medical School, College of Medical Evangelist, Los Angeles, California, summarizes a peculiar inadequacy of the allopathic sect of medicine in the following words as appears on page 5 of his book *Back Pain:*

> "If our nation of scientists and engineers had been as slow in their inquiries into the mysteries of outer space as our profession has been in its inquiry into the mysteries of joint spaces, our country would surely have degenerated into a second rate power. Our profession has been rapidly losing

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[5] (Continued)
fatal penicillin anaphylaxis in 1958 and found adequate indication for therapy in only *twelve*. * * *

"Hypersensitivity reactions and illnesses resulting from drug toxicity make up two major categories of antibiotic-induced diseases. A third results from emergence of antibiotic-resistant microorganisms following suppression of normal bacterial flora by antibiotics."

Morton Mintz, the Washington Post reporter who broke the story of the thalidmide tragedy, in his book, *The Therapeutic Nightmare*, at page 2 records that the United States Public Health Service reports that each year there occurs 1,368,000 nonfatal, so-called therapeutic misadventures occasioned by the ingestion of drugs, including vaccines. He reports: "(p. 2) Indeed, by 1960, at least 40 new diseases or syndromes had been attributed to drugs used in therapy."

At pages 11-12 Mintz records the testimony of Dr. Albe M. Watkins, whose son died from a prescribed dosage of Chloromycetin, given before the California Senate Committee, in respect to which he said: " 'I do not know of one single victim who wouldn't be alive today had he only been permitted to get well by himself, by nature, without the use of this antibiotic * * *.' "

Dr. Franklin Farman, a Whittier urologist, told the state senate committee: " 'We lost our daughter—5 years old—through the administration of Chloromycetin . . . Her death was one of many similar cases of blood dyscrasias (which) have not been recognized. * * * I know of no more torturous death, especially in children * * *.' "

At page 51, the author recalls President Kennedy's statement in 1962 that, "more than 20 per cent of the new entities listed since 1956 in the Council's New and Nonofficial Drugs had been found " 'incapable of sustaining one or more of their sponsor's claims.' "

At page 73, the admonition of Dr. Lawson Wilkins given to his fellow pediatricians of the American Pediatric Society is recorded in these words: "One of the great shortcomings of our medical teachers of the present generation is a failure to inculcate into students and interns a cold, scrutinizing, skeptical state of mind which would make them leery of accepting any therapeutic claim without proof. If the young physician were less credulous and gullible he would be less enthusiastic about trying every new sample of the 400 new drugs handed to him annually, and he might do less damage to his patients."

The reader is referred specifically to pages 98, 165, 185, 220, 245, 249, and 269-270 for additional outstanding examples of a similar nature.

ground to other groups who practice the healing art in all problems concerning joint pains, but, particularly in the field of back pains."

Page 9:

"When we recognize that there is scarcely a disease known to medicine which may not bring a patient to his doctor with a chief complaint of back pain, the importance of being able to rule out with confidence any structure in the back as being the seat of that pain becomes apparent."

Page 11:

"The fascination of dealing with back problems is a never ending source of pleasure mingled with anxiety and should be most attractive to both the undergraduate and postgraduate students. Yet, in medical schools and resident training programs students look askant at anyone who is attracted by these problems and with horror when they are faced with such problems themselves. This reaction is only because they are exposed to **no teaching on the subject,** they are offered **no method of clinical examination** by which they can assess the problem, and they are **not exposed to any useful** method of treatment which can ever positively be said to cure these patients."

In his other book, *Joint Manipulation* at page 1, the author says:

"The fact however remains that people who have no connection with the medical profession, or its preliminary training of the basic sciences, have been treating patients with success when orthodox treatment has often failed; and it behooves us, once and for all, to try to decide what is good in joint manipulation * * * ."

This vacuum of knowledge, indigenous to the allopathic concept of therapy, encompasses that area of treatment that falls within the professional domain of the chiropractic discipline of the healing art. The chiropractic

mode of treatment is the only therapy that brings about effective body response or restoration of health, where the pathogenesis of body ailments or disease resides in joint spaces and allied structural derangements. This therapy, by virtue of the state law involved, is sought to be denied to every citizen of Louisiana, based on no rational or reasonable grounds.

Scientific and statistical data, abounding in diverse publications, indicate, not only a doubt as to the overall efficacy and safety of drug therapy, but that under no circumstances should the Nation fall victim to the adventurous notion of instituting such a mode of treatment as a standard for all others. To be sure thereby we are induced to the inescapable conclusion that the promotion and judicial protection of other less radical, less dangerous, and in many instances, more efficacious, non-drug modes of treatment must be assured, lest the public at large be totally stripped of any voice in the type treatment desirable and left with the inefficient alternative of stoically enduring the sufferings of physical ailments or of submitting to a mode of treatment capable of producing physical consequences more lasting and disabling than the original ailments. . .

3. THE FAILURE OF THE COURT TO APPLY THE BASIC PRINCIPLE THAT "A GOVERNMENTAL PURPOSE TO CONTROL OR PREVENT ACTIVITIES CONSTITUTIONALLY SUBJECT TO STATE REGULATION MAY NOT BE ACHIEVED BY MEANS WHICH SWEEP UNNECESSARILY BROADLY AND THEREBY INVADE THE AREA OF PROTECTIVE FREEDOMS," *Aptheker v. Secretary of State*, 378 U.S. 500, 508, 84 S. Ct. 1659, 1664; *Schware v. Board of Bar Examiners*, 353 U.S. 234, 239, 77 S. Ct. 752, 756, 1 L. Ed. 2d 796, DENIES TO PLAINTIFFS EQUAL JUSTICE, CON-

TRARY TO THEIR CONSTITUTIONAL RIGHTS AND IMMUNITIES.

Predictably, the Louisiana State Legislature during its current legislative session, surrendering to the hostile and overwhelming demands of the politically powerful collection of allopathic physicians, again refused to enact legislation, pressed upon it by plaintiffs, that would provide for the effective regulation of the chiropractic profession of Louisiana by means more narrowly adaptable to plaintiffs than the unconstitutionally broad provisions of the state statute assailed in this lawsuit. This is but the familiar product of the persistent and perennial recrudescence of the vitriolic opposition of the allopathic profession, whose capability for mobilizing and mesmerizing state legislators into carrying out its campaign to abjectly oppress the chiropractic profession has been and remains as the most outstanding ignominious political phenomenon of the past forty odd years of Louisiana history. The 1876 Constitutional Doctrine of remitting citizens to the polls for redress of grievances exemplified by *Munn v. Illinois*, 94 U.S. (4 Otto) 113, 154, has been a source of no comfort to plaintiffs. To the contrary, their constitutional right to engage in the practice of their useful profession has consistently been infringed by a majority of the people, acting through their state legislators, contrary to the constitutional doctrine of *Lucas v. 44th General Assembly of the St. of Colorado*, 377 U.S. 713, 84 S. Ct. 1459.

The undisputed evidentiary record in this case at bar demonstrates that the examination requirements for qualification under the state statute, as administered, relate exclusively to the mode of treatment peculiar only to the allopathic concept of medicine. As administered, therefore, the requirements of the statute compel an applicant to practice as a chiropractic physician to first qualify as an allopathic

physician. Such a broad reach, induced by administrative excesses, invades the area of protected freedoms, because it establishes an arbitrary requirement that makes it impossible for a chiropractic physician to legally practice his profession in the State of Louisiana. Such a result is proscribed by the constitutional principle exemplified by *Aptheker*.

CONCLUSION

With the advent of the prospective wholesale criminal prosecution of all chiropractic physicians in the State of Louisiana, who are without any recourse whatever, and the evident intent of the American Medical Association to effect the repeal of the chiropractic licensing statutes of the forty-eight states of the Nation, there exists in this case substantial federal questions of overriding national significance, which, in plaintiffs' respectful judgment, requires the granting of a rehearing, in order to vindicate and protect plaintiffs' constitutional rights and to forestall the prospective territorial expansion of the constitutional disfranchisement extant in Louisiana as regards chiropractic physicians vis a vis allopathic physicians.

Respectfully submitted,

s/ J. Minos Simon

J. MINOS SIMON,
Post Office Box 52116 OCS,
Lafayette, Louisiana,
Attorney for Plaintiffs-Appellants.

Of Counsel:
SIMON, TRICE & MOUTON,
Attorneys at Law,
1408 Pinhook Road,
Post Office Box 52116, OCS,
Lafayette, Louisiana.

CERTIFICATE OF GOOD FAITH

I, J. Minos Simon, attorney for plaintiffs-appellants, herein, and a member of the bar of the Supreme Court of the United States, hereby certify that the foregoing application for rehearing is filed in good faith and not for delay.

Lafayette, Louisiana, this 11th day of July, 1966.

/s/ J. Minos Simon

J. MINOS SIMON,
Post Office Box 52116 OCS,
1408 Pinhook Road,
Lafayette, Louisiana.

PROOF OF SERVICE

I, J. Minos Simon, one of the attorneys for plaintiffs, appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 11th day of July, 1966, I served copies of the foregoing application for rehearing on the several parties hereto as follows:

1. On the Louisiana State Board of Medical Examiners, et al, defendants, by mailing copies in a duly addressed envelope, with first class postage prepaid, to their attorneys of record, W. Ford Reese, Esquire, Adams and Reese, Attorneys at Law, 1808 National Bank of Commerce Building, New Orleans, Louisiana, and Robert F. LaCorgne, Jr., Esquire, Attorney at Law, National Bank of Commerce Building, New Orleans, Louisiana.

2. On Louisiana State Medical Society, intervenor, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to its attorneys

of record, Phelps, Dunbar, Marks, Claverie & Sims, Esquires, 420 Hibernia Bank Building, New Orleans, Louisiana.

S/ J. Minos Simon

J. MINOS SIMON,
Post Office Box 52116 OCS,
1408 Pinhook Road,
Lafayette, Louisiana.

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IN THE

Supreme Court of the United States

October Term, 1965

No. 1288

ENGLAND, ET AL.,

Appellants,

vs.

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, ET AL.,

Appellees.

MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE IN SUPPORT OF APPELLANT'S PETITION FOR REHEARING, AND BRIEF IN SUPPORT OF MOTION.

Counsel of Record: JAMES A. LAKE, SR.,
4600 Bryan Circle
Lincoln, Nebraska 68506

Other Counsel: CHARLES W. PHILLIPS,
509 Continental Building
Lincoln, Nebraska 68508

LAWRENCE E. MURPHY,
509 Continental Building
Lincoln, Nebraska 68508

Attorneys for Amicus Curiae, NEBRASKA CHIROPRACTIC PHYSICIANS ASSOCIATION, INC.

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The NEBRASKA CHIROPRACTIC PHYSICIANS ASSOCIATION, INC., hereby respectfully moves for leave to file a brief Amicus Curiae in this case in support of the Appellants' Petition for Rehearing.

Consent of the Appellants has been obtained. The Appellees have refused consent to the filing of a brief Amicus Curiae.

The interest of the Nebraska Chiropractic Physicians

Association,, Inc., in this case arises from the fact that its membership consists of 61 Doctors of Chiropractic practicing the healing art of Chiropractic in the State of Nebraska under active licenses issued by the Nebraska Department of Health. In addition, another 19 Doctors hold active licenses in Nebraska, making a total of 80 Doctors in the active practice of Chiropractic in the State of Nebraska.

The Chiropractors in Nebraska believe that the impact of the decision in this case upon the Chiropractic profession in the 48 States and the District of Columbia where Chiropractors are now licensed to practice their profession has not yet been fully brought to the attention of this honorable Court.

If the decision of the lower court stands, legislative attacks upon the Chiropractic profession will begin and the profession in the United States will be ultimately destroyed.

Dated this 15 day of July, 1966.

Respectfully submitted,

Counsel of Record:

JAMES A. LAKE, SR.,
4600 Bryan Circle,
Lincoln, Nebraska 68506
Attorney for Amicus Curiae, Nebraska Chiropractic Physicians Association, Inc.

Other Counsel:

CHARLES W. PHILLIPS,
509 Continental Building,
Lincoln, Nebraska 68508

Attorney for Amicus Curiae,
Nebraska Chiropractic Physicians
Association, Inc.

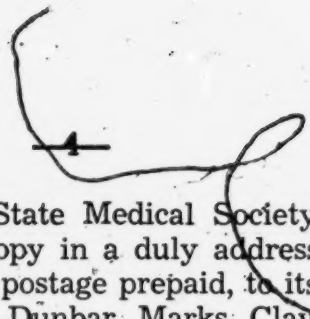
LAWRENCE E. MURPHY,
509 Continental Building,
Lincoln, Nebraska 68508
Attorney for Amicus Curiae,
Nebraska Chiropractic Physicians
Association, Inc.

PROOF OF SERVICE

I, James A. Lake, Sr., one of the attorneys for Amicus Curiae, Nebraska Chiropractic Physicians Association, Inc., and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 15 day of July, 1966, I served copies of the foregoing Motion for Leave to File a Brief Amicus Curiae, on the several parties hereto as follows:

1. On England, et al., Appellants, by mailing copies in a duly addressed envelope, with first class postage prepaid, to their attorneys of record, J. Minos Simon, Post Office Box 52116 OCS, Lafayette, Louisiana, and Floyd J. Reed, 919 Maison Blanche Building, New Orleans, Louisiana.

2. On the Louisiana State Board of Medical Examiners, et al., Appellees, by mailing copies in a duly addressed envelope, with first class postage prepaid, to their attorneys of record, W. Ford Reese, Esquire, Adams and Reese, Attorneys at Law, 1808 National Bank of Commerce Building, New Orleans, Louisiana, and Robert F. LaCorgne, Jr., Esquire, Attorney at Law, National Bank of Commerce Building, New Orleans, Louisiana.



3. On Louisiana State Medical Society, intervenor, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to its attorneys of record, Phelps, Dunbar, Marks, Claverie & Sims, Esquires, 420 Hibernia Bank Building, New Orleans, Louisiana.

JAMES A. LAKE, SR.,
4600 Bryan Circle
Lincoln, Nebraska 68506
Attorney of Record for Amicus Curiae, Nebraska Chiropractic Physicians Association, Inc.

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Counsel of Record: JAMES A. LAKE, SR.,
4600 Bryan Circle
Lincoln, Nebraska 68506

Other Counsel: CHARLES W. PHILLIPS,
509 Continental Building
Lincoln, Nebraska 68508

LAWRENCE E. MURPHY,
509 Continental Building
Lincoln, Nebraska 68508

Attorneys for Amicus Curiae, NEBRASKA CHIROPRACTIC PHYSICIANS ASSOCIATION, INC.

GANT PUBLISHING CO., Lincoln, Nebraska

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INTEREST OF AMICUS CURIAE

The Nebraska Chiropractic Physicians Association, Inc. is a Nebraska non-profit corporation founded in 1915 shortly after the original Chiropractic Act was passed by the State Legislature of Nebraska providing for the licensure and practice of the profession of Chiropractic.[1] The Association represents the interests of its 61 Doctors who hold active licenses from the Nebraska State Department of Health to practice the healing art of Chiropractic. In addition to the 61 Association members, there are 19 other active licensed Chiropractors in Nebraska. The Association speaks for all 80 active licensed Chiropractors now practicing in the State of Nebraska in matters affecting the survival of the profession.

The Nebraska Chiropractic Physicians Association, Inc. is interested in this litigation because it fears that the decision of the special three judge federal court in this case will be utilized by doctors of medicine and their medical associations, state and national, to support legislative efforts to destroy the practice of chiropractic in states other than Louisiana. The special three judge lower court decision in this case grants to the doctors of medicine the legislative weapon to outlaw all other healing arts which do not follow the theory, practice and methods of the sect known as medicine.

The Nebraska Chiropractic Physicians Association, Inc. fears that if the lower court decision in this case is permitted to stand, due to the history of chiropractic in Nebraska, it is almost certain that oppressive legislation will

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1. Laws of Nebraska, C. 197, §§ 1-7 (1915). Approved at the 34th Session of the Nebraska Legislature, April 1, 1915.

be proposed in the Nebraska Legislature using such decision as precedent, which legislation will be extremely difficult, if not impossible to defeat.

The Nebraska Statutes[2] now require a Doctor of Chiropractic to meet the following qualifications in order to be licensed:

1. Graduate from a four year High School;
2. Graduate from a four year Chiropractic College;
3. Pass a "Basic Science" Examination in the subjects of anatomy, physiology, chemistry, bacteriology, pathology, and hygiene, administered by a Board of laymen, not doctors; and
4. Pass an Examination in Chiropractic administered by a Board of Chiropractors.

The original 1915 Nebraska Chiropractic Act only required license applicants to graduate from high school, chiropractic college and to pass a chiropractic exam.[3] HOWEVER, in 1927, as a part of a nation wide drive by doctors of medicine to eliminate new Chiropractors, the medical associations were successful in securing passage of the "Basic Science" act in Nebraska.[4] The effectiveness of this technique is illustrated by the fact that from 1927 until 1949, twenty-two years later, not one new license in Chiropractic was issued in Nebraska.[5]

It should be noted that the Nebraska laws[6] do not require

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2 Section 71-179, R. R. S. of Nebraska, 1943, as Amended by Chapter 413, Laws of Nebraska, 1965.

3 Note 1 Supra.

4 Sections 71-401 through 71-416, R. R. S. of Nebraska, 1943.

5 Notes 2 and 4 Supra.

a chiropractor to graduate from a medical college and the Nebraska basic science examination does not include the subjects of surgery and materia medica as the Louisiana Statutes[6] do.

This brief survey of legislation affecting Chiropractors in Nebraska demonstrates that the Chiropractic profession is subject to attack by the medical profession and that these attacks very often result in legislation designed to drive the Chiropractic profession out of Nebraska.

The method utilized in Louisiana is very simple; in order for a Louisiana Doctor of Chiropractic to become admitted to practice he must also be a Doctor of Medicine. This is so asinine as to be unbelievable were it not the tragic truth. One does not require a teacher of English to also be a teacher of Greek. The crippling restrictions in Louisiana[7] of (1) requiring a degree from a medical college and (2) requiring an examination in surgery and materia medica were upheld in the instant case. Your amicus curiae fears that these same restrictions will find their way into the statute law of other states, including Nebraska, and Chiropractic will cease to exist as a healing art in the United States.

ARGUMENT

I.

Chiropractic is not medicine.

Since the founding of the separate, independent healing art known as "Chiropractic" by Dr. D. D. Palmer in 1895, the battle has raged between the medical profession and the chiropractic profession. In the beginning, Chiropractors were simply jailed as practicing medicine without a

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6 Louisiana Revised Statutes 37:1271.

7 Note 6 Supra.

license. Seventy-one years later this gloomy prospect still faces Chiropractors in the State of Louisiana.

All of the licensing arguments still being made by the medical profession are based on an original false premise that medicine includes chiropractic. This premise has been shown false by the public policy of 48 states and the District of Columbia which recognize the separate integrity of Chiropractic.[8] In all these jurisdictions a Doctor of Chiropractic to be licensed passes a Chiropractic examination and in some states such as Nebraska, passes both the Chiropractic examination and a "basic science" examination. In none of these states are the subjects of surgery and materia medica included in any of the examinations for chiropractors.

Application of the United States Constitution cannot be accurate to the litigation in this case until the basic truth is recognized that there is no one healing art known as "medicine"; instead there are several healing arts: medicine, dentistry, osteopathy, chiropractic and so forth. When a profession has served the people of the United States for seventy-one years, it is time to take judicial notice that its separate character is a matter of legal fact.

II.

The Due Process Clause of the 14th Amendment to the United States Constitution is violated by a State Statute requiring a person to possess a degree from a medical college and to pass an examination in surgery and materia medica before he may practice the healing art of "Chiropractic".

Your Amicus Curiae do *not* contend that the states

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[8] See Appendix.

are powerless to regulate the practice of Chiropractic. This Court held in *Dent v. West Virginia*, 129 U. S. 114 (1889) that a doctor of medicine could not complain because the state conditioned his right to practice medicine upon a degree from a medical college, or passage of an examination. This Court justified such qualification because the end sought by the legislature was the public's health and the means promoted this end in a fair manner, neither arbitrary nor capricious. In short, the test is, as in all due process questions: Is the end ligitimate? Are the means fair and appropriate to the end?

The *Dent* case held the end (public health) legitimate. Chiropractic may also be licensed by the state. The issue in the instant case is whether the means are appropriate. On this issue the *Dent* case is not an authority for the validity of the state law in this case. In fact, its language is contrary to the holding of the lower court in this case. On page 122 of the *Dent* opinion this Court stated:

> "The nature and extent of the qualifications required must depend primarily upon the Judgment of the State as to their necessity. *If they are appropriate to the calling or profession,* and attainable by reasonable study or application, no objection to their validity can be raised because of their stringency or difficulty. *It is only when they have no relation to such calling or profession,* or are unattainable by such reasonable study and application, they then can operate to deprive one of his right to pursue a lawful vocation." (Emphasis added).

The Louisiana statute,[9] as administered by the State Board of Medical Examiners, requires chiropractors to graduate from a College of medicine and requires that they pass an examination in surgery and materia medica.

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[9] Louisiana Revised Statutes 37:1271.

The record in this case demonstrates that surgery and materia medica are as foreign to the practice of chiropractic as plumbing is to the practice of law. In the words of the *Dent* case these subjects are not "* * * appropriate to the calling * * *" and a State law requiring a chiropractor to present a degree from a college which teaches these subjects and to pass an examination in their subjects operates "to deprive one of his right to pursue a lawful vocation" contrary to the due process clause of the 14th Amendment of the Federal Constitution.

III.

The Equal Protection clause of the 14th Amendment to the United States Constitution is violated by a state law which requires chiropractors to meet the same requirements as medical doctors, when other state laws establish different license requirements for other healing arts.

The equal protection clause does not prescribe different treatment for different subjects. The State is not powerless to classify subjects for different legislative treatment. However, the state must base its classification upon some rational basis. It cannot treat differently, subjects which are substantially alike. In short, the classification or discrimination may not be invidious. As pointed out in the Jurisdictional Statement filed by the Appellants in this case (pg. 15-19) Louisiana has exempted from the Louisiana Medical Practice Act numerous areas of the healing arts, for example: dentists, nurses, homeopathic physicians, osteopaths and podiatrists. The chiropractor alone must meet the demands of the Medical Practice Act.

Such discrimination is invidious. If the public health and welfare is not threatened by osteopaths who have not

graduated from a medical college and who have not passed examinations in surgery and materia medica, the public health will not be harmed by chiropractors who do not meet these requirements either. Chiropractors and osteopaths both practice healing arts separate from medicine and the discrimination resulting from the Louisiana Statute is invidious and discriminatory.

Today, 48 states and the District of Columbia license chiropractors.[10] These states and the District do not require either medical college degrees or examination in surgery and materia medica. If the public health and welfare demanded that chiropractors possess such degrees and pass such examination, we would most certainly find more that two of the 50 states cognizant of the danger.

Respectfully submitted,

Counsel of Record:

JAMES A. LAKE, SR.,
4600 Bryan Circle,
Lincoln, Nebraska

Other Counsel:

CHARLES W. PHILLIPS,
509 Continental Building
Lincoln, Nebraska

LAWRENCE E. MURPHY,
509 Continetal Building,
Lincoln, Nebraska
Attorneys for Amicus Curiae, NEBRASKA CHIROPRACTIC PHYSICIANS ASSOCIATION, INC.

[10] See Appendix.

PROOF OF SERVICE

I, James A. Lake, Sr., one of the attorneys for Amicus Curiae, Nebraska Chiropractic Association, Inc., and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 15 day of July, 1966, I served copies of the foregoing Brief in Support of Motion for Leave to File a Brief Amicus Curiae, on the several parties hereto as follows:

1. On England, et al., Appellants, by mailing copies in a duly addressed envelope, with first class postage prepaid, to their attorneys of record, J. Minos Simon, Post Office Box 52116 OCS, Lafayette, Louisiana, and Floyd J. Reed, 919 Maison Blanche Building, New Orleans, Louisiana.

2. On the Louisiana State Board of Medical Examiners, et al., Appellees, by mailing copies in a duly addressed envelope, with first class postage prepaid, to their attorneys of record, W. Ford Reese, Esquire, Adams and Reese, Attorneys at Law, 1808 National Bank of Commerce Building, New Orleans, Louisiana, and Robert F. LaCorgne, Jr., Esquire, Attorney at Law, National Bank of Commerce Building, New Orleans, Louisiana.

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JAMES A. LAKE, SR.,
4600 Bryan Circle
Lincoln, Nebraska 68506
Attorney of Record for Amicus Curiae, Nebraska Chiropractic Physicians Association, Inc.

APPENDIX

STATES OF THE UNITED STATES AND THE DISTRICT OF COLUMBIA WHERE CHIROPRACTORS ARE LICENSED WITHOUT BEING REQUIRED TO BE A DOCTOR OF MEDICINE AS IN LOUISIANA.

Year Chiropractic License Act Adopted	Jurisdiction	Citation of Statute
1913	Kansas	Chap. 65, Art. 13; Chap. 74, Art. 13 (Corrick's Gen. Stat. of. Kansas, Anno., 1935); Chap. 65, Secs. 1816, 2201-2205; Chap. 75, §§ 3044-3048 (Corrick, 1945 Supp. to Gen. Stat. of Kansas, 1935).
1913	No. Dakota	Chap. 43-06 (N. D. Rev. Code of 1943).
1915	Nebraska	Chap. 71, §§ 112-115, 102, 110, 162, 177-182, and 401 (Rev. Stat. of Nebraska, 1943).
1915	Oregon	Title 54, Chap. 3 (Oregon Comp. Laws Anno.).
1915	Arkansas	Title 72, §§ 401-414 (Arkansas Statutes Anno.).
1915	Ohio	§§ 1274.1-1274.7 (Page's Ohio Gen. Code Anno.).
1917	Connecticut	Chap. 209, §§ 4378-4387 (Gen. Statutes of Conn., 1949 Revision).
1917	No. Carolina	§§ 90-139 to 90-157 (Gen. Stat. of N. C., 1943).
1918	Montana	Chap. 269 (Anderson & McFarland, Rev. Codes of Mont. 1935).
1919	Florida	§§ 2441-3447 (Compiled Gen. Laws of Florida, 1940 Supp.);

		§§ 460.01-460.27 (Florida Statutes Anno., 1944).
1919	Idaho	Title 54, §§ 701-704 (Bobbs-Merrill, Idaho Code, 1949).
1919	Minnesota	Chap. 148, §§ 148-01-148.10 (Minn. Stat. Anno.).
1919	Vermont	Chap. 286 (Vermont Stat. Rev. of 1947).
1919	Washington	Title 68, Chap. 7 (Remington's Rev. Stat. of Wash. Anno.).
1921	Arizona	Title 67, §§ 701-708 (Arizona Code, Anno.).
1921	Georgia	Title 84, §§ 501-502, 9905 & Title 92, §§ 1909 & 2005 (Georgia Code, 1933).
1921	Iowa	Chapters 146, 147 & 151 (Code of Iowa 1946).
1921	New Hampshire	Chap. 252 (Rev. Laws of N. H., 1942).
1921	New Mexico	Chap. 51, Art. 3 (New Mex. Statutes Anno., 1941).
1921	Oklahoma	Title 59, Chap. 5 (Oklahoma Statutes Anno.).
1921	So. Dakota	Chap. 27.05 (South Dakota Code of 1939).
1922	California	Act 4811, §§ 1-19 (Deering's Calif. General Laws).
1923	Ilinois	Title 91, §§ 1-16(s) (Smith-Hurd, Ill. Ann. Statutes 1945).
1923	Nevada	§§ 1080-1092 (Hillyer, Nev. Comp. Laws, 1929) §§ 1070, 1862-15 (Nev. Comp. Laws, Supplemental 1931-41).
1923	Rhode Island	Chap. 275 (Gen. Laws of Rhode Island, 1938).
1923	Tennessee	Title 15, Chap. 1 & Chap. 7 (Williams Tenn. Code, Ann., 1934).
1923	Utah	Title 79, Chap. 1 (Utah Code Anno., 1943).

1924	Maine	Chap. 65 (Rev. Statutes of Maine, 1944).
1925	Hawaii	Chap. 37 (Revised Laws of Hawaii, 1945).
1925	West Virginia	Chap. 30, Art. 16 (West Virginia Code of 1943).
1925	Wisconsin	Chap. 147, Sec. 147.23 (Wisconsin Stat. of 1943).
1927	Indiana	Title 63, Sec. 1312 (Burns, Indiana Statutes Anno.).
1927	Missouri	Chap. 63 (Missouri Rev. Stat. Anno.).
1928	Kentucky	Chap. 312 (Kentucky Rev. Stat. 1948).
1929	District of Columbia	Title 2, §§ 106, 114. 117, 120 & 121 (Healing Arts and Practice Act, Title 2, §§ 101-140, D. of C. Code, 1940 Ed.).
1929	Maryland	Art. 43, §§ 441-456; Art. 41, § 162. Flack, Anno. Code of Maryland).
1929	Wyoming	§§ 33-134—§§ 33-150 (Wyoming Statutes Annotated, 1957).
1932	So. Carolina	§ 5162 (Code of Laws of South Carolina, 1942).
1933	Colorado	Chap. 34 (Colorado Statutes, Anno.).
1933	Michigan	Chap. 120, §§ 6739, 6740, 6743 & 6755 (Comp. Laws of Michigan).
1937	Delaware	Chap. 6, Art. 16, §§ 193, 194 & 200 (Rev. Code of Del. 1935).
1939	Alaska	Title 35, Chap. 3, §§ 21-30 (Alaska Comp. Laws Anno.).
1944	Virginia	Chap. 68 (Virginia Code of 1942, Anno.).
1949	Texas	Chap. Six A, Art. 4512b, §§ 1-24 (Vernon's Anno. Rev. Civ. Stat. of Texas, 1960).
1951	Pennsylvania	62 P. S. §§ 601-625 (1959).

1953	New Jersey	Title 45, Chap. 9 §§ 1,5.1, 14.5 & 14.9 (N. J. Statutes, Anno.).
1959	Alabama	Title 46, § 259, Title 51, § 565 (Code of Ala. 1940).
1963	New York	Education Law §§ 6550-6565 (McKinney's Cons. Laws of N. Y.).
1966	Massachusetts	Chapter 409 of Acts of 1966, Laws of Massachusetts.

END